NAVAL WAR COLLEGE

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WITH SOLUTIONS AND NOTES

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UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1936

For sale by the Superintendent of Documents, Washington, D.C. - - - - Price 75 cents (cloth)

PREFACE

This volume of International Law Situations for 1935 has, as in recent years, been prepared by George Grafton Wilson, LL.D., professor of international law at Harvard University. The naval officer from time to time faces problems under new conditions or under new conventional agreements. Some of these have been the subject of discussion by the Staff of the College and members of the Class of 1936. After critical canvassing of the principles involved, the material has been organized for publication.

The conclusions reached are in no way official, but the notes furnish a convenient survey of material which may be significant for the subjects presented.

In order to increase the usefulness of this publication, criticisms and suggestions covering timely topics for discussion will be welcomed by the War College.

E. C. Kalbfus,
Rear Admiral, United States Navy,
President Naval War College.

July 3, 1936.

CONTENTS

SITUATION I

VESSELS AND NEUTRAL PORTS

States X and Y are at war. Other states are neutral. There have been several engagements between the vessels of war of X and Y.

(*a*) State B declares that it will maintain strict neutrality.

(1) The *Xara*, a cruiser of state X, has run upon a submerged reef 4 miles off state B while engaging vessels of war of state Y, but, though damaged, unseaworthy, and still pursued by vessels of Y, escapes to a port of B. State B declines to allow repairs of any kind in its waters unless the *Xara* be interned to the end of the war.

(2) State B declines to allow privileges in its harbors except such as are allowed to belligerent vessels of war to the *Aba*, a neutral merchant vessel of state A, which is entirely loaded with freight belonging to state X and bound for state A.

(3) State B declines to admit, except under the rules for vessels of war, the *Xebe* which claims to have been transformed from a supply ship of the navy of state X and to be registered in state X as a merchant vessel.

(*b*) The *Dobo*, a merchant vessel of state D, has taken a cargo in state E and delivered it at a port of state Y and then has taken on a new cargo there and delivered a part of this cargo at sea to a supply ship of the navy of Y.

State X protests to state E and to other neutral states demanding that the *Dobo* be treated as an auxiliary of the navy of Y.

(*c*) The *Xibi*, a vessel of war of state X, enters a naval port of state E in distress because short of fuel. The port is closed to commerce. The commander of the *Xibi* requests fuel for voyage to the nearest port of state X.

What would be the lawful action in each case?

SOLUTION

(*a*) 1. The *Xara* may remain in the port of neutral state B for 24 hours unless state B has previously issued special regulations. During the 24-hour sojourn the *Xara* may make such repairs as possible, using the personnel and material on board. After 24 hours the *Xara* should be interned.

2. Unless neutral state B has previously issued special regulations, it may not decline to allow to the *Aba* the usual privileges granted to neutral merchant vessels in its harbors.

3. If neutral state B and belligerent state X are not bound by special treaty agreement, and if state B has not previously issued special regulations, state B may legally decline to admit, except under the rules for vessels of war, the *Xebe* which has been transformed from a supply to a merchant vessel.

(*b*) There is no obligation on the part of state E or other neutral states to treat the *Dobo* as an auxiliary of the navy of state Y.

(*c*) If the *Xibi*, a vessel of war of state X, enters in distress a closed port of neutral state E, the *Xibi* should be interned or may be allowed or required to depart under pledge to take no further part in the war.

NOTES

Value of preliminary agreements.—While it is possible to regard the Hague Conventions of 1899 and 1907 and other conventions as falling short of stating the principles which might be in accord with justice.

it is essential to consider that the principles of justice are not yet standardized, and what seems to one state as just may not be so regarded by other states, and what is recognized at one period as just may not have the same appeal under other conditions or at another period. It may be much more important that some rules of conduct which are generally accepted be agreed upon in advance, though these are not ideal, rather than that no agreement exist upon any aspect of a subject, and the whole matter be the subject of controversy in a time of crisis when any agreement even upon minor points is difficult.

The value of agreements in advance may well be illustrated by the settlement of the Dogger Bank incident in 1904 through a Commission of Inquiry provided for in Hague Convention I of 1899. This convention was not ideal in its provisions, and was after this test much modified in 1907, but it did offer a means for settling a difficulty to the satisfaction of the parties at a time when relations were severely strained and when, if the convention had not already existed, it would have been doubtful whether negotiations after the event would have been successful.

Three-mile limit.—While much wider limits than 3 miles have been claimed for jurisdiction of the coast state over marginal seas, yet 3 miles at least is usually recognized as a minimum. During the World War some states, accustomed to claim in time of peace wider limits, renounced these claims when the duties of maintaining neutrality in the wider areas became too burdensome. No state has seemed inclined to claim a belt of jurisdiction in the marginal sea of less than 3 miles. There is a general acceptance of the right of a shore state to exercise jurisdiction beyond 3 miles for revenue and other national purposes. Many treaties and domestic laws prescribe 3 miles as the recognized limit of jurisdiction. The Convention Relating to the Nonfortifica-

tion and Neutralization of the Aaland Islands, Geneva, October 20, 1921, provides that:

> "The territorial waters of the Aaland Islands are considered to extend for a distance of three marine miles from the low-water mark on the islands, islets, and reefs not permanently submerged." (9 L. N. T. S., p. 212.)

Submerged reefs outside the 3-mile limit are usually considered to be in the high sea and have been so regarded in international negotiations though wider claims have been made (23 American Journal of International Law, Spec. Sup. (1929), pp. 275 *et seq.*).

Repairs in neutral port.—When vessels were slow sailing and dependent upon winds and tides, ordinary repairs essential to seaworthiness were easily determined and the line between damages due to natural causes and those due to acts of the enemy were usually distinguishable. With the introduction of aids to navigation which made vessels largely independent of winds and tides, differences of opinion as to the extent and character of repairs in neutral ports on vessels of war became common. The old expression "perils of the sea" required new interpretations, but usually was held to cover cases of distress similar to those granted to sailing vessels.

The 24-hour sojourn would rarely be sufficient for repairs and was a comparatively recent restriction, though short sojourns were not questioned unless resort to shore resources for aid became necessary. It was generally regarded as unnecessary for the neutral authorities to concern themselves with what went on within a vessel of war during its lawful sojourn in port provided it did not involve aid in the way of matériel or personnel from the shore, i. e., so far as the vessel of war was a self-sufficient unit, it was free of neutral port regulations. The cause of damages which might be repaired by the ship itself within the lawful period of its sojourn was not regarded as a concern of the

neutral-port authorities. The reason for sojourn beyond the 24-hour limit would be a matter to be presented to the neutral for consideration as would the reason for requesting aid from shore.

The ground for extension of the period of sojourn or other special privileges came in a general way to be stated as for repairs due to damages from natural causes in distinction from damages due to combat or acts of the enemy. As was stated in the *American case* in discussing the rules of the Treaty of Washington, 1871.

> "The repairs that humanity demand can be given, but no repairs should add to the strength or efficiency of a vessel, beyond what is absolutely necessary to gain the nearest of its own ports." (1931 Naval War College, International Law Situations, p. 88; I Papers relating to the Treaty of Washington, p. 71.)
>
> "As the vessel enters the port, so is she to leave it, without addition to her effective power of doing injury to the other belligerent." (Ibid.)

Hague Convention XIII, 1907.—Article I of Hague Convention XIII of 1907 states the general principle of the relations of belligerents to neutrals in time of naval war as follows:

> "Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from all acts which would constitute, on the part of the neutral Powers which knowingly permitted them, a nonfulfillment of their neutrality."

Article 17 applies particularly to repairs in neutral ports:

> "In neutral ports and roadsteads belligerent ships of war can carry out only such repairs as are absolutely necessary to render them seaworthy, and can not add in any manner whatsoever to their fighting force. The neutral authorities shall decide what repairs are necessary, and these must be carried out with the least possible delay."

Views on sojourn.—There have been two points of view particularly emphasized which appeared from time

to time in discussions of the Institute of International Law and the Second Hague Conference of 1907.

Some favored the same treatment in a neutral port for a vessel of war and a merchant vessel provided the vessel of war did not enter the neutral port as a part of a naval operation. It was very properly objected that for the neutral authorities to be called upon to determine what acts of a vessel of war or vessels of war of belligerents were connected with naval operations would be to put upon such authorities an impossible task and to lay them open to recriminations from both parties. It was also shown that it would be presumptuous to assume that in time of war any movement of a vessel of war of a belligerent was not connected with naval operations.

The second point of view was based on an admission that the responsibilities of the neutral should be defined and that the minimum of responsibility in discrimination should rest upon neutral authorities. This had already been set forth in the 24-hour rule of sojourn with rules for departure of opposing belligerents. The taking of fuel was more clearly defined though rules of the Hague Convention XIII left opportunity for wide difference in practice.

It was admitted that a state might close its ports to vessels of war or make such regulations as it saw fit. It was recognized that it would be impossible in most cases for the neutral to determine the treatment to be accorded to a vessel of war on the basis of the cause of its entrance for this would imply a knowledge not usually obtainable, and if obtainable would make judgment upon it open to difference of opinion. What might seem a military reason to the neutral authorities might seem to the belligerent to be without military significance beyond that of every movement of the vessel. The general rule, therefore, which gained in favor was that entrance and sojourn of 24 hours without use of port

facilities other than refueling and taking on of supplies would be allowed. Internment for the duration of the war would follow unless there was special ground not due to military causes for granting a longer period of sojourn.

Those principles were particularly applied and became more clearly defined during the Russo-Japanese War (1904 Naval War College, International Law Situations, pp. 79–93; 1905 Naval War College, International Law Topics, pp. 154–170).

The reasons for granting any period of sojourn or a period beyond 24 hours is now considered to be within the competence of the neutral authorities, and these authorities must act in such manner as not to make the port liable to be regarded as an enemy base, and must use due diligence in preventing such use while not denying the treatment to which belligerents are entitled under the principles of humanity.

Regulations on repairs.—States have from time to time made pronouncements in regard to repairs. After the Hague conventions, Denmark, Norway, and Sweden jointly agreed upon rules of neutrality, December 21, 1912, which were separately adopted.

Article 5 (a) provided that—

"In the ports or roadsteads of the kingdom, belligerent war vessels can repair their damages only to the extent necessary for the security of navigation, and they can not increase their military force in any manner whatsoever. The authorities of the kingdom will indicate the nature of the repairs to be made. The repairs should be completed as rapidly as possible." (1917 Naval War College, Int. Law Documents, p. 185.)

The Habana Convention, 1928, on Maritime Neutrality, article 9, states that—

"Damaged belligerent ships shall not be permitted to make repairs in neutral ports beyond those that are essential to the continuance of the voyage and which in no degree constitute an increase in its military strength.

"Damages which are found to have been produced by the enemy's fire shall in no case be repaired.

"The neutral state shall ascertain the nature of the repairs to be made and will see that they are made as rapidly as possible." (Report, Delegates of the United States, Sixth International Conference of American States, p. 219.)

Of this Habana convention the report said that the original draft before the subcommittee had contained some provisions "intended to change existing practice in the interest of neutrals." Objections were made to "variations from general usage." Desire was expressed that the proposals should conform to the practice of nations.

"The result was a modified draft, in large measure that of the thirteenth convention of the Second Hague Peace Conference of 1907, with sundry modifications and additions in order to take note of the measures which neutrals had taken to preserve their rights during the World War. As finally drafted and originally adopted, the project presupposed a war, in which the American Republics would be neutral. For this reason it was indispensable that the practice of nations should be strictly observed, as it would be undesirable on the part of the American states to attempt to change the general rights of all neutrals by a special agreement of their own." (Ibid., p. 18.)

Brazil's rules on repairs, 1914.—The General Rules of Neutrality issued by Brazil, August 4, 1914, provided for sojourn in Brazilian port longer than 24 hours in case of urgent need.

"ART. 7th. * * *

"The case of urgent need justifies the staying of the warship or privateer at the port longer than twenty-four hours:

"1. If the repairs needed to render the ship seaworthy cannot be made within that time;

"2. In case of serious danger on account of stress of weather;

"3. When threatened by some enemy craft cruising off the port of refuge.

"These three circumstances will be taken into consideration by the Government in granting a delay for the refugee ship."

* * * * * * *

"ART. 13th. The belligerent warships are allowed to repair their damages in the ports and harbors of Brazil only to the extent of rendering them seaworthy, without in any wise augmenting their military power.

"The Brazilian naval authorities will ascertain the nature and extent of the proper repairs, which shall be made as promptly as possible." (1916 Naval War College, International Law Topics, p. 10.)

Statement of Professor Hyde.—Professor Hyde points out that the rules in regard to internment leave a degree of uncertainty in regard to the nature of repairs which may be permitted in a neutral port, saying:

"It should be observed that the Hague Convention makes no distinction or limitation with reference to the causes of damage. A neutral State is thus regarded as free from an obligation to prevent the making of repairs necessitated by the conduct of the opposing belligerent, provided they merely serve to effect seaworthiness. In a strict sense, any repairs productive of seaworthiness, irrespective of the cause of damage, necessarily increase the fighting force of the recipient if it is otherwise capable of engaging in hostilities. To render, for example, an armed submarine fit to keep the sea, or to reach its nearest home port, may suffice also to enable the vessel to resume the offensive with the full measure of its strength.

"In brief, the existing rules draw a line of distinction which, at the present time, [1922] appears to be insufficient to prevent a neutral port offering permitted and requisite repairs from becoming in fact a base of operations. The question presents itself, therefore, whether in any reconsideration of existing regulations and of the practice growing out of them, maritime States should endeavor to cut down the privileges of repair, and proportionally lessen the opportunity for neutral territory so to augment the fighting power of belligerent ships." (2 Hyde, International Law chiefly as interpreted and applied by the United States, p. 731.)

(*a*) (1) *The "Xara" in port of B.*—It is generally held that a submerged reef more than 3 miles off the coast is in the high seas. Some states have maintained in time of peace wider claims to jurisdiction, but in time of war the obligations become more burdensome. A state which may claim a wider jurisdiction for fisheries, revenue, or other reasons would often claim three mile jurisdiction only under war conditions. Complications may arise when contiguous states claim different limits, as belligerents may have to accommodate them-

81178—36——2

selves to variations which seem to them arbitrary and which may cause unnecessary friction.

In the case of the *Xara*, state B in admitting the cruiser to its port without immediate internment shows that it does not regard the engagement at the time the *Xara* runs upon the reef as within its limits.

The *Xara* was still pursued by vessels of State Y when it escaped to the port of State B. The use of this port of neutral State B as a port of refuge to escape capture would make the *Xara* liable to internment. Article 22 of the General Rules of Neutrality issued by Brazil, August 4, 1914, states, "Belligerent warships that are chased by the enemy, and, avoiding attack, seek refuge in a Brazilian port will be detained there and disarmed." (1916, Naval War College, International Law Situations, p. 13.) This rule does permit departure of vessels if their officers pledge not to engage in war operations. The Danish order of December 20, 1912, in the article relating to repair reads, "All repair relating to the fighting capacity of the vessel is prohibited." (Ibid., p. 51.) Rules similar to the above were issued by other states during the World War.

For repairs beyond these which could be made within 24 hours and for repairs involving use of resources from neutral sources, prior approval and authorization would be required, and for such aid the neutral would assume the responsibility. Matters relating solely to the internal economy of a vessel of war of a belligerent during its 24-hour sojourn are within the control of the commander.

Neutral and belligerent rights.—The rights and obligations of belligerents toward neutrals are not the same as or correlative to the rights and obligations of neutrals toward one another. The fact that a belligerent may have a right to capture or destroy a vessel under certain circumstances places no obligation upon a neutral to take any action in regard to this vessel.

It has often happened that a belligerent has suggested that neutrals take such action as would facilitate the conduct of war against an opponent, e. g., restrict the movements or acts of enemy vessels.

On August 27, 1918, the Secretary of State of the United States in a communication to the Chargé in Norway made a suggestion to the Norwegian Government as to the regulation of the use of Norwegian territorial waters, saying:

"The Norwegian Government cannot be unmindful of the fact that in the prosecution of the war being waged against the Central Powers the Government of the United States is transporting across the Atlantic Ocean hundreds of thousands of troops and immense quantities of supplies and munitions for their maintenance and use. Possessed of this knowledge the Norwegian Government must perceive that so long as German submarines are permitted to pass unmolested through the coastal waters of Norway into the Atlantic Ocean from the North Sea, the military forces of the United States, the supplies necessary for their subsistence, and the munitions required for their operations will be, while upon the high seas, in serious danger of submarine attack and destruction.

"In view of the menace to American interests which will result from the free passage of submarines through the territorial waters of Norway, the Government of the United States believes that the Norwegian Government will realize the obligation which rests upon it to prevent by every means in its power the passage of German submarines through waters within the jurisdiction of Norway. Furthermore it cannot fail to realize that if Norwegian waters are used by belligerent submarines as a rendezvous whence they can freely pass into the Atlantic Ocean for hostile purposes the waters so used may justly be considered a base of naval operations, the establishment of which within Norwegian jurisdiction the Government of the United States believes to be entirely contrary to the will and intention of the Government of Norway.

"In the circumstances the Government of the United States most earnestly urges the Norwegian Government to take all necessary steps to prevent a situation which might cause serious embarrassment to both Governments which would be deeply regretted by the Government of the United States as it has only the most friendly feeling for the Government and people of Norway and is desirous to prevent as well as to remove all

causes of differences affecting the good relations of the two countries in their intercourse with each other." (Foreign Relations, U. S., 1918, Supplement I, volume II, p. 1783.)

In presenting the suggestion, the Chargé took occasion to emphasize several points, and referring to the passage of submarines said,

"(3) That as stated in my note the United States believed Norwegian territorial waters could justly be regarded as a base of naval operations if they are used by German submarines as a rendezvous, whence the latter can freely pass into the Atlantic Ocean for hostile purposes. Minister for Foreign Affairs rather questioned the valadity of this statement; I said that so long as the Norwegians failed to prevent the passage of submarines through coastal waters, there was no essential difference between the situation created for German submarines in Norwegian waters by the protection afforded them by our respect for Norwegian neutrality, which was [restraining] us, and the situation in which submarines found themselves when under the protection of German fortresses and mine fields at their German base. Minister for Foreign Affairs admitted the force of the contention somewhat reluctantly." (Ibid., p. 1784.)

In the course of a reply on September 28, 1918, the Norwegian Minister of Foreign Affairs said:

"The thirteenth Hague convention of 1907 provides expressly in article 10 that a country's neutrality is not called in question by the mere fact that belligerent war vessels are permitted to pass through its territorial waters. No exception is made in this provision of the convention for submarine boats. The fact that Norway by a domestic regulation has conditionally forbidden such war vessels to pass through her territorial waters does not in any respect change the position of Norway under international law and gives the belligerents no right to make a demand on the Norwegian Government which is not based on general rules of international law. The regulation in question, as stated in my note of August 20, was called forth exclusively by consideration of Norway's own interests, and just as a similar regulation has [not] been made by all other neutral states, so Norway would also be fully entitled by international law to revoke this regulation if, according to circumstances, at a given time Norway should no longer find it compatible with her interests.

"There is no information before the Norwegian Government that Norwegian territorial waters are being used by foreign submarines as a 'rendezvous'. None of the circumstances surrounding the cases of sojourn of submarines in territorial waters which the Norwegian naval authorities have observed or been informed of or which are brought by the British Government confidentially to the knowledge of the Norwegian Government, indicate that these cases involved anything else than passage." (Ibid., p. 1786.)

Later the Norwegian Government announced that it had mined its territorial waters.

Attitude of the United States, 1914.—By a circular of the Department of State of October 15, 1914, replying to queries upon the right to supplying articles of war, the attitude of the Government was stated.

"In the first place it should be understood that, generally speaking, a citizen of the United States can sell to a belligerent government or its agent any article of commerce which he pleases. He is not prohibited from doing this by any rule of international law, by any treaty provisions, or by any statute of the United States. It makes no difference whether the articles sold are exclusively for war purposes, such as firearms, explosives, etc., or are foodstuffs, clothing, horses, etc., for the use of the army or navy of the belligerent.

"Furthermore, a neutral government is not compelled by international law, by treaty, or by statute to prevent these sales to a belligerent. Such sales, therefore, by American citizens do not in the least affect the neutrality of the United States.

"It is true that such articles as those mentioned are considered contraband and are, outside the territorial jurisdiction of a neutral nation, subject to seizure by an enemy of the purchasing government, but it is the enemy's duty to prevent the articles reaching their destination, not the duty of the nation whose citizens have sold them. If the enemy of the purchasing nation happens for the time to be unable to do this that is for him one of the misfortunes of war; the inability, however, imposes on the neutral government no obligation to prevent the sale.

"Neither the President nor any executive department of the Government possesses the legal authority to interfere in any way with trade between the people of this country and the territory of the belligerent. ~~There is no act of Congress conferring such of the belligerent~~. There is no act of Congress conferring such authority or prohibiting traffic of this sort with European nations, although in the case of neighboring American Republics Con-

gress has given the President power to proclaim an embargo on arms and ammunition when in his judgment it would tend to prevent civil strife." (1916 Naval War College, International Law Topics, p. 95.)

British position, February 10, 1915.—In a long note of Sir Edward Grey, of February 10, 1915, there was an attempt to justify the detention of American cargoes destined for neutral European ports. In this note was foreshadowed the attitude which subsequently took form in retaliatory measures. Following explanation of many British acts, the note concludes:

"I have given these indications of the policy which we have followed, because I cannot help feeling that if the facts were more fully known as to the efforts which we have made to avoid inflicting any avoidable injury on neutral interests, many of the complaints which have been received by the administration in Washington, and which led to the protest which your excellency handed to me on the 28th December would never have been made. My hope is that when the facts which I have set out above are realized, and when it is seen that our naval operations have not diminished American trade with neutral countries, and that the lines on which we have acted are consistent with the fundamental principles of international law, it will be apparent to the Government and people of the United States that His Majesty's Government have hitherto endeavoured to exercise their belligerent rights with every possible consideration for the interests of neutrals.

"It will still be our endeavour to avoid injury and loss to neutrals, but the announcement by the German Government of their intention to sink merchant vessels and their cargoes without verification of their nationality or character, and without making any provision for the safety of noncombatant crews or giving them a chance of saving their lives, has made it necessary for His Majesty's Government to consider what measures they should adopt to protect their interests. It is impossible for one belligerent to depart from rules and precedents and for the other to remain bound by them." (1915 U. S. Foreign Relations, Supplement, p. 333.)

Acts of 1935 and 1936.—On August 31, 1935, a joint resolution of Congress was adopted:

"Providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohi-

bition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war."

Detailed regulations were made for carrying into effect this resolution.

Another joint resolution, approved February 29, 1936, elaborated the resolution of August 31, 1935, and extended the period of the operation to May 1, 1937.

Changed American attitude, 1935–36.—The President of the United States had on October 5, 1935, declared that a state of war unhappily existed between Ethiopia and the Kingdom of Italy" and under the joint resolution of February 29, 1936, he proclaimed on the same date "that a state of war unhappily continues to exist between Ethiopia and the Kingdom of Italy."

Under this proclamation persons within the jurisdiction of the United States were to abstain from export of arms, ammunition, or implements of war to Ethiopia or Italy or Italian possession or to a neutral port for transshipment.

The changed attitude of the Government of the United States is evident in the detailed list of articles named under the categories of "arms, ammunition, and implements of war." This list is as follows:

"Category I

"(1) Rifles and carbines using ammunition in excess of caliber .22, and barrels for those weapons;

"(2) Machine guns, automatic or autoloading rifles, and machine pistols using ammunition in excess of caliber .22, and barrels for those weapons;

"(3) Guns, howitzers, and mortars of all calibers, their mountings and barrels;

"(4) Ammunition in excess of caliber .22 for the arms enumerated under (1) and (2) above, and cartridge cases or bullets for such ammunition; filled and unfilled projectiles or forgings

for such projectiles for the arms enumerated under (3) above; propellants with a web thickness of 0.015 inch or greater for the projectiles of the arms enumerated under (3) above;

"(5) Grenades, bombs, torpedoes and mines, filled or unfilled, and apparatus for their use of discharge;

"(6) Tanks, military armored vehicles, and armored trains.

"Category II

"Vessels of war of all kinds, including aircraft carriers and submarines.

"Category III

"(1) Aircraft, assembled or dismantled, both heavier and lighter than air, which are designed, adapted, and intended for aerial combat by the use of machine guns or of artillery or for the carrying and dropping of bombs, or which are equipped with, or which by reason of design or construction are prepared for, any of the appliances referred to in paragraph (2) below;

"(2) Aerial gun mounts and frames, bomb racks, torpedo carriers, and bomb or torpedo release mechanisms.

"Category IV

"(1) Revolvers and automatic pistols using ammunition in excess of caliber .22;

"(2) Ammunition in excess of caliber .22 for the arms enumerated under (1) above, and cartridge cases or bullets for such ammunition.

"Category V

"(1) Aircraft, assembled or dismantled, both heavier and lighter than air, other than those included in Category III;

"(2) Propellers or air screws, fuselages, hulls, wings, tail units, and under-carriage units;

"(3) Aircraft engines, assembled or unassembled.

"Category VI

"(1) Livens, projectors, and flame throwers;

"(2) Mustard gas (dichlorethylsulphide), lewisite (chlorovinyldichlorarsine and dichlorodivinylchlorarsine), ethyldichlorarsine, methyldichlorarsine, ethyliodoacetate, brombenzylcyanide, diphenolchlorarsine, and dyphenolcyanoarsine.

"And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution, and

this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same."

Belligerent cargoes.—Ordinarily a neutral state is concerned with clearance of vessels loaded in its ports for belligerent destinations. The use of its ports as sources of supply to belligerents may under certain circumstances constitute those ports bases for belligerent operations which would make the neutral state liable. Cargoes bound for foreign neutral ports from a foreign neutral port regardless of the nature of the cargo, if not under some domestic restriction, as perhaps opium in some states, are not liable to interference or delay and the neutral carrier has no responsibility other than for port regulations.

The act of March 4, 1915, by which the United States regulated the use of its ports, empowered the President to direct that clearance be withheld—

"from any vessel, American or foreign, which he has reasonable cause to believe to be about to carry fuel, arms, ammunition, men, or supplies to any warship, or tender, or supply ship of a belligerent nation, in violation of the obligations of the United States as a neutral nation." (38 Stat., Pt. I, 1926; 1929 Naval War College, International Law Situations, p. 136.)

Where the sole question in regard to treatment of a neutral vessel relates to its cargo, the destination is the essential factor.

In a memorandum of the Department of State of September 19, 1914, it was said:

"6. A merchant vessel, laden with naval supplies, clearing from a port of the United States for the port of another neutral nation, which arrives at its destination and there discharges its cargo, should not be detained if, on a second voyage, it takes on board another cargo of similar nature.

"In such a case the port of the other neutral nation may be a base for the naval operations of a belligerent. If so, and even if the fact is notorious, this Government is under no obligation to prevent the shipment of naval supplies to that port. Commerce in munitions of war between neutral nations cannot as a rule be a basis for a claim of unneutral conduct, even though

there is a strong presumption or actual knowledge that the neutral state, in whose port the supplies are discharged, is permitting its territory to be used as a base of supply for belligerent warships. The duty of preventing an unneutral act rests entirely upon the neutral state whose territory is being used as such a base.

"In fact this principle goes further in that, if the supplies were shipped directly to an established naval base in the territory or under the control of a belligerent, this Government would not be obligated by its neutral duty to limit such shipments or detain or otherwise interfere with the merchant vessels engaged in that trade. A neutral can only be charged with unneutral conduct when the supplies, furnished to a belligerent warship, are furnished directly to it in a port of the neutral or through naval tenders or merchant vessels acting as tenders departing from such port." (1916 Naval War College, International Law Topics, p. 92.)

Public property on vessel.—It might be possible for the entire cargo of a merchant vessel to belong to the state whose flag it is flying or to another state. Certain states have considered private property in the commonly accepted sense as no longer recognized. The Union of Socialist Soviet Republics, while not recognizing some of the widely accepted doctrines in regard to property, has by reciprocal treaties agreed to act in accord with international law in treatment of property (Taracouzio, Soviet Union and International Law, chap. IX).

Even in the World War and earlier, vessels were chartered entire by states and loaded with cargoes belonging to the state. The unratified declaration of London, 1909, in article 46 provided for the liability of a neutral vessel chartered entire by a belligerent government stating that it should be the same as a merchant vessel of the enemy. The report of the conference explains this clause:

"The vessel is chartered entire by the enemy Government. It is then wholly at disposal of the Government, which can use her for different purposes more or less directly connected with the war, notably for purposes of transportation; such is the position of colliers which accompany a belligerent fleet. There will often be a charter-party between the belligerent Government and the

owner or master of the vessel; but it is only a question of proof. The fact of the charter of the vessel entire suffices, in whatever way it may be established." (1916 Naval War College, International Law Topics, p. 109.)

While so far as the belligerent is concerned, the action of a neutral vessel chartered entire by an opposing belligerent would justify treatment of the vessel as an enemy merchant vessel, it has not been generally held that any neutral would be placed under special obligations as regards such a vessel. The neutral state whose flag the chartered vessel is entitled to fly may withdraw its protection from the vessel, but neither that state nor any other state was committed to taking any special action on account of unneutral service by the vessel. The right of a belligerent to prevent or to penalize an act of a neutral national or vessel does not imply an obligation on the part of a neutral state to prevent the act.

Article 12, Habana Convention on Maritime Neutrality.—Article 12 of the Habana Convention on Maritime Neutrality, 1928, is under the section on duties and rights of belligerents and therefore relates primarily to the action of belligerents. This article provides that—

"The neutral vessel shall be seized and in general subjected to the same treatment as enemy merchantmen:

"(a) When taking a direct part in the hostilities;

"(b) When at the orders or under the direction of an agent placed on board by an enemy government;

"(c) When entirely freight-loaded by an enemy government;

"(d) When actually and exclusively destined for transporting enemy troops or for the transmission of information on behalf of the enemy.

"In the cases dealt with in this article, merchandise belonging to the owner of the vessel or ship shall also be liable to seizure." (Report, Delegates of the United States, Sixth International Conference of American States, p. 220.)

These provisions are such as would apply to vessels engaged in unneutral service and are such as have been applied.

Article 22 of the same convention provides that:

"Neutral states are not obligated to prevent the export or transit at the expense of any one of the belligerents of arms, munitions and in general of anything which may be useful to their military forces.

"Transit shall be permitted when, in the event of a war between two American nations, one of the belligerents is a Mediterranean country, having no other means of supplying itself, provided the vital interests of the country through which transit is requested do not suffer by the granting thereof." (Ibid., p. 222.)

(*a*) (2) *The "Aba" in port of B.*—There has been some question as to the interpretation of the 1928 Habana Convention on Maritime Neutrality, article 12. This article being under Section II, Duties and Rights of Belligerents and not under Section III, Rights and Duties of Neutrals applies to treatment by a belligerent of a neutral vessel as an enemy merchant vessel "when entirely freight-loadel by an enemy government."

This provision is similar to provisions in article 46 of the unratified declaration of London of 1909, but this article referred to the treatment of a neutral vessel by a belligerent and not to the treatment of a vessel of one neutral by another neutral.

The fact that two states are at war does not put a neutral state under obligation, nor does it give a neutral state the right to interfere with the commerce of another neutral state. The *Aba*, a neutral merchant vessel of state A, entirely loaded with freight belonging to state X, would be liable outside neutral jurisdiction to interference by state Y, but would not be in the category of vessels of war. Its cargo bound for state A has a neutral destination and is, so far as state B is concerned, lawful commerce.

Transformation from war to merchant vessel.—In early maritime wars it was often difficult to distinguish between vessels which might engage in war and those which were engaged in purely peaceful undertakings.

Armed merchant vessels and privateers were the entire complement of some fleets sailing against an enemy. The transition to the type of vessel solely designed for war purposes was slow and the professional training of the personnel for these vessels has been a late development.

Naturally the transformation from merchant vessel to vessel of war or from vessel of war to merchant vessel would not be a problem till the characteristics of such vessels were clearly marked. The distinction in service and in treatment became more essential as the status of neutrality developed. The neutral state was after a time regarded as responsible for the conduct of vessels under belligerent flags while such vessels were in neutral ports. It was, therefore, essential that the neutral authorities be able to distinguish between vessels of war and merchant vessels, since neutral obligations differed in regard to these classes, and the privileges of these vessels in a neutral port differed.

Consideration at the Naval War College.—In 1906, before the Second Hague Peace Conference of 1907, and after the experiences of the Russo-Japanese War of 1904–5, the matter of need of a clearly established character particularly for subsidized, auxiliary, and other vessels which might be of special service when placed under naval control, was discussed before the Naval War College. The conclusions of the Naval War College discussion was that "the use for all purposes of naval warfare, of auxiliary, subsidized, or volunteer vessels regularly incorporated in the naval forces of a country, is in accord with general opinion and practice, and that this addition to their regular naval forces in time of war is contemplated by nearly all if not all the principal maritime nations." Convention VII, which was drafted at the Second Hague Peace Conference but not signed by the America delegates, recognized that it was probable that merchant vessels would

be incorporated in the fighting fleet in time of war, and that it was essential that the character of such vessels should be established both for belligerents and for neutrals. There was, however, wide divergence of view among the states represented at The Hague in 1907. Austria, France, Germany, and Russia were among the states upholding the right of conversion at sea, while Great Britain was among the states opposing such conversion.

Article XIV of the Washington Treaty of 1922 on the Limitation of Naval Armament definitely refers to preparations made "In merchant ships in time of peace for the installation of warlike armaments for the purpose of converting such ships into vessels of war." This article limits such preparation to the "necessary stiffening of decks for the mounting of guns not exceeding 6-inch caliber", and is binding only on the contracting parties for the duration of the treaty. Conversion of merchant vessels to warlike use is, therefore, now generally recognized by maritime states as lawful, and the only problem is one of degree of limitation on such conversion.

Discussion at The Hague, 1907.—In the discussion at the Second Hague Peace Conference, 1907, there was general assent to the right of a belligerent to convert merchant vessels into vessels of war as analagous to enrolling militia in its forces on land. It was also unanimously agreed that proper measures for responsible government control and identification should be taken. Very early in the Conference (June 28, 1907) it was proposed by Dr. Lammasch of Austria-Hungary that the "conversion shall be permanent and reconversion into a merchant ship shall be forbidden". Later Dr. Lammasch explained that conversion should be for the period of the war and reconversion should be prohibited.

Regarding conversion of a merchant vessel to a vessel of war in a neutral port, Lord Reay, of Great Britain, said, on July 12, 1907,

"A vessel which should enter a neutral port simply as a vessel belonging to the merchant marine and which should leave the port as a war-ship with the necessary commission would have undergone complete conversion in neutral waters and would have increased its value as a fighting unit. But a neutral may not, without violating the principles of neutrality, permit a belligerent to increase its value as a fighting vessel in neutral territorial waters. It follows, therefore, that a neutral State may not permit, under penalty of incurring the same reproach, a vessel which enters its territorial waters as a noncombatant to quit those waters as a war-ship duly authorized by a belligerent State and equipped to take part in hostilities.

"But if the neutral is bound to see that its neutrality is respected in its territorial waters, the belligerent is likewise bound to abstain from violating that neutrality. It is therefore clear that, if the fact of a neutral State's permitting a belligerent vessel to be converted into a war-ship within its territorial waters constitutes a violation of neutrality, it is likewise the belligerent's duty not to commit an act of this kind in neutral territorial waters, and that any vessel which has thus been converted by disregarding the neutral's neutrality and the duties of a belligerent has not regularly acquired the character of a war-ship and its status as such must not be recognized." (III Proceedings, Hague Peace Conferences, Carnegie Endowment translation, p. 812.)

The Japanese representative at the Conference saying that—

"the question of reconversion is closely related to the question of the place where conversion may be effected,"

remarked also that—

"The only object that the committee has in mind is to diminish, so far as possible, the difficulties caused to neutrals by unrestricted conversion and reconversion. In so far as Japan is concerned she cannot admit the prohibition of reconversion as long as the war lasts and she prefers to decrease the difficulties above referred to by restricting the places where conversion or reconversion may take place to the restriction of the length of time which these vessels must observe before they may be reconverted." (III Proceedings of the Hague Peace Conferences, Carnegie Endowment for International Peace, p. 993.)

The convention finally agreed upon at The Hague in 1907 left the difficult question "whether the conversion

of a merchant ship into a war-ship may take place upon the high seas" unsettled. The question of reconversion was also left unsettled.

Attitude on reconversion, 1907.—The attitude upon reconversion at the Second Hague Peace Conference may also be seen from the discussion in the Fourth Commission, Committee of Examination, on August 30, 1907.

"With regard to the declaration of conversion, the President recalls that there is an Austro-Hungarian proposal which does not permit reconversion as long as hostilities last.

"His Excellency Baron Von Macchio states that he has nothing to add to the statement of reasons for this proposal made by Mr. Lammasch and that he maintains the proposal.

"His Excellency Mr. Keiroku Tsudzki asks why reconversion is prohibited, inasmuch as it is possible to change the class even of war-ships during the course of hostilities.

"His Excellency Mr. Hammarskjöld replies that the allowing of successive conversions and reconversions of vessels on the high seas would cause the most serious difficulties to the neutrals they encountered, and it is for the purpose of avoiding these difficulties that the Austro-Hungarian proposal has been presented.

"His Excellency Lord Reay supports the Austro-Hungarian proposal for the same reasons as those indicated by his Excellency Mr. Hammarskjöld.

"Mr. Fromageot remarks that the condition of permanence aims to prevent abuses; neutrals should not be given any anxieties on this score.

"His Excellency Mr. Keiroku Tsudzuki would prefer that the limitation of the right to conversion and reconversion should apply not to the right itself but to the places where it may be exercised.

"Jonkheer van Karnebeek recalls the amendment proposed by Mexico at the seventh meeting of the Commission, laying down clearly the rule that the prohibition of reconversion applies only to the duration of the war.

"His Excellency Mr. Keiroku Tsudzuki sees no necessity of accepting the Austro-Hungarian proposal as long as the right of conversion on the high seas is not recognized. It might be accepted only after it has been agreed to admit the principle of the right of conversion on the high seas. But even in that case he does not see why reconversion in national ports might not be permitted.

"The President thinks that under these circumstances it is useless to take a vote." (III Proceedings of the Hague Peace Conference, Carnegie Endowment for International Peace translation, p. 999.)

British proposal, 1907.—At the Second Hague Peace Conference, 1907, Great Britain defined the term "war-ship" as follows:

"There are two classes of war-ships:

"A. Fighting ships;

"B. Auxiliary vessels.

"A. The term 'fighting ship' shall include all vessels flying a recognized flag, which are armed at the expense of the State for the purpose of attacking the enemy, and the officers and crew of which are duly authorized for this purpose by the Government to which they belong. It shall not be lawful for a vessel to assume this character except before its departure from a national port, nor to relinquish it except after its return to a national port.

"B. The term 'auxiliary vessel' shall include all merchant ships, whether belligerent or neutral, which are used for the transportation of sailors, munitions of war, fuel, provisions, water, or any other kind of naval supplies, or which are designed for making repairs, or charged with the carrying of dispatches or the transmission of information, if the said vessels are obliged to carry out the sailing orders given them, either directly or indirectly, by a belligerent fleet. The definition shall likewise include all vessels used for the transportation of military troops." (III Proceedings Hague Peace Conferences, p. 1116.)

The British delegate later withdrew the preamble in regard to two classes of warships and explained that it was the aim of the British proposal—

"to assimilate to the military vessels of a naval force, with respect to the treatment to which they are exposed, merchant ships, whether employed in the service of this fleet for any purpose or placed under its orders, or serving to transport troops in any way, thus plainly rendering hostile assistance to the fleet." (Ibid., p. 853.)

Institute of International Law, 1913.—Professor Fauchille after an exhaustive study presented to the Institute of International Law at its Oxford Session in

1913 a project for a Manual of Naval War embodying more than 150 articles.

Articles 11 and 12 of the project were:

"ART. 11. *Le navire transformé en navire de guerre conservera ce caractère pendant la durée des hostilités, et il ne pourra pendant ce temps être à nouveau transformé en navire public ou en navire privé.*

"ART. 12. *Transformation des navires militaires en navires publics ou privés.—Un navire militaire ne peut, tant que durent les hostilités, être transformé en navire public ou en navire privé.*" (26 Annuaire de l'Institut de Droit International (1913), p. 214.)

These articles were among those receiving extended comment which was summarized as follows:

"Aux termes des articles 11 et 12 du projet, tant que durent les hostilités, un navire public ou privé transformé en bâtiment de guerre ne peut reprendre sa première qualité pas plus qu'un bâtiment de guerre ne peut être transformé en navire public ou privé. Ces dispositions ont été textuellement reproduites dans le texte de la Commission. Une autre solution eût donné à un belligérant un moyen trop commode de faire échapper ses bâtiments de guerre à la destruction imminente par son adversaire, et de leur procurer en port neutre les provisions et le combustible nécessaires.

"Quelques membres de la Commission ont fait remarquer qu'en définitive l'article 11 n'était qu'un cas particulier de l'article 12, et qu'il serait dès lors préférable de réunir les deux articles en un seul, qui, suivant une rédaction proposée par M. Dupuis, pourrait être ainsi conçu: 'Les navires de guerre ne peuvent, pendant la durée des hostilités, être transformés en navires publics ou privés. Il n'y a, à cet égard, aucune distinction entre les navires de guerre qui avaient cette qualité à l'ouverture des hostilités et ceux qui l'on acquise postérieurement'. Mais, après réflexion, on a décidé que, pour plus de clarté, on maintiendrait dans le projet deux dispositions distinctes.

"Au sujet de la retransformation, M. Edouard Rolin Jaequemyns a posé à la Commission une question. Si un navire public ou privé, transformé en bâtiment de guerre par un belligérant, est pris par son adversaire, ce dernier peut-il le retransformer en navire public ou privé? La retransformation ne doit-elle pas être défendue qu'au seul belligérant qui a procédé à la transformation? Cette distinction ne pouvait être admise par la Commission dès lors qu'elle adoptait l'article 12, qui

stipule d'une manière générale qu'un bâtiment de guerre ne peut, tant que durent les hostilités, être transformé en navire public ou privé. Il y a, d'ailleurs, les mêmes raisons de décider dans les deux hypothèses, quel que soit l'auteur de la transformation. La Commission a donc tranché la question posée par M. Rolin en décidant que ce qui est interdit dans l'article 11 c'est la retransformation 'par n'importe laquelle des parties belligérantes'. M. Kaufmann avait toutefois insisté particulièrement pour que la retransformation ne fût défendue qu'au belligérant qui a fait la transformation; d'après lui, le bâtiment de guerre d'un belligérant qui est pris par l'ennemi cesse, par le fait même de la prise, d'être un bâtiment de guerre; et il doit pouvoir dépendre du capteur de faire du navire l'emploi qu'il jugera convenable.

"Mais qu'arrivera-t-il si un bâtiment de guerre a été, contrairement à la loi, transformé en navire public ou en navire privè? Il semble que la transformation, étant illégale, devrait être réputée non avenue et qu'ainsi le navire continuera d'etre un bâtiment de guerre. Cela est-il toutefois possible? Comment concevoir qu'un navire puisse avoir la qualité de bâtiment de guerre s'il ne remplit aucune des conditions caractéristiques du vaisseau de guerre? L'admettre à user, dans ces conditions, des pouvoirs des navires militaires, ne serait-ce pas enlever toute sanction à l'acte illégal et, en définitive, autoriser la participation aux hostilités d'autres navires que ceux qui sont vraiment des bâtiments de guerre? M. Kaufmann a proposé de déclarer qu'un tel navire perdrait les droits des bâtiment de guerre mais en conserverait les charges. M. Strisower a estimé qu'au point de vue pratique la proposition de M. Kaufmann entrait dans des questions qu'il appartenait au juge de résoudre. La difficulté paraissant insoluble, la Commission a, en fin de compte, décidé de la réserver." (Ibid, p. 215.)

As a result of the discussions the ideas of articles 11 and 12 were embodied in article 10 of what came to be known as the Oxford Manual of Naval War, 1913, and this article 10 was translated as:

"Article 10. *Conversion of war-ships into public or private vessels.*—A war-ship may not, while hostilities last, be converted into a public or private vessel." (Resolutions of the Institute of International Law, Carnegie Endowment for International Peace translation, p. 176.)

Precautions against conversion.—The Secretary of Commerce of the United States in 1914 took measures

to prevent conversion of merchant vessels into vessels of war in American ports. These precautions were in excess of those usually taken. As reported to the Secretary of State, August 6, 1914, the collector of Customs at New York was instructed by telegram as follows:

"Have representative of each foreign vessel in your port certify to this Department whether she is a merchant vessel intended solely for the carriage of passengers and freight, excluding munitions of war, or whether she is a part of the armed force of her nation. This information is for purpose of maintaining the neutrality of the United States under recent proclamation President. Clearance will be refused in absence of this certificate.

"Wire Department before issuing clearance papers to foreign vessels unless you are satisfied after careful inspection that ship has not made any preparations while in port tending in any way to her conversion into a vessel of war. Taking on abnormal amount of coal, except in case of colliers, would indicate such conversion. Unpacking of guns already on board would be conclusive. Painting of vessel a war color would indicate conversion. It must be clear that she is not to be used for transportation recruits or reserves for a foreign army or navy. This does not prevent transportation of passengers in usual sense, as where there are women and children and men of different nationalities even though among them there were a few reserves without your knowledge. If her passengers are nearly all men and practically all of same nationality, clearance cannot be granted. It must be unquestionable that she has no arms or munitions of war aboard." (1914, U. S. Foreign Relations, Supplement, p. 595.)

In the instructions of August 10, 1914, signed by the Secretary of the Treasury and by the Secretary of Commerce, it was stated,

"5. When a vessel of a belligerent power, which has arrived as a merchant vessel, alters, or attempts to alter, her status as a merchant vessel or there is reason to believe she intends to alter such status, so as to become an auxiliary cruiser or an armed vessel in any degree, you will immediately notify the department by wire, giving all particulars. Any of the following acts will constitute such a change of status: (a) The placing in position or otherwise changing the location of guns which were

on board the vessel at the time of her arrival; (b) so changing the appearance, color, rig, or equipment of a vessel as to render her suitable for some purpose of war; (c) the taking on board of guns, arms, or ammunition under circumstances which in any way indicate the outfitting of the vessel for any purpose of war, or in aid of a military expedition." (Ibid, p. 597.)

The Prinz Eitel Friedrich.—A memorandum of March 13, 1915, when Mr. Lansing was counselor of the Department of State, outlines the attitude of the Department upon conversion and use of the flag.

"In a conversation this morning with the German Ambassador, relative to the sinking of the *William P. Frye* by the *Prinz Eitel Friedrich*, and the presence of the latter vessel at Newport News, I said to him that I thought this Government had shown the German Government very considerable consideration in regard to the vessel at Newport News. He asked me in what way it had been shown, to which I replied 'in not seizing the vessel and arresting the captain for piracy.' He said he did not understand what I meant. I said to him that we had no proof that the *Prinz Eitel Friedrich* was a German cruiser; that she, so far as the evidence disclosed, was a merchantman; that we had not been notified of her conversion into a cruiser and that she did not appear in the list of war vessels of Germany. The Ambassador said that she was in command of officers of the German Navy, to which I replied that so were other merchant vessels of German nationality, and that that was no evidence of her public character. He then said that she was flying the naval flag of Germany. I answered him that I did not think the flag she was flying was any indication of her character; that he might recall the fact that the cruiser *Emden* entered a port in the Malay Peninsula with a Japanese naval flag flying, but that that fact did not make the *Emden* a Japanese war vessel. He asked me what I thought should be done and I said that I thought this Government should be immediately notified of the conversion of the *Prinz Eitel Friedrich* into a cruiser and that she had entered our port as a public ship of Germany and that he further should state whether it was the intention to make repairs, not to make repairs, or to intern; that in case we were not advised that the vessel intended to make repairs there was no other recourse but to order her to leave port within twenty-four hours. The Ambassador said he would give the matter his immediate attention." (1915 U. S. Foreign Relations, Supplement. p. 824.)

The German Ambassador asked that the *Prinz Eitel Friedrich* be allowed to remain in Newport News longer than 24 hours for necessary repairs, and stated that she was formerly a steamer of the North German Lloyd and had been commissioned as an auxiliary cruiser at Tsingtao according to the seventh convention of The Hague, 1907. Fourteen working days were allowed for putting the vessel in seaworthy condition. In explaining the nature of the repairs in a memorandum to the British Ambassador, a State Department memorandum of March 30, 1915, said,

"As to the point made by the British Embassy that the cleaning and painting of the bottom of the *Prinz Eitel Friedrich* and the making of engine-room repairs will materially increase her fighting efficiency, it is only necessary to state that this conclusion may be drawn from any work in the nature of repairs which may be done upon a cruiser while in port, such as repairs to her steam pipes or to any part of the ship whatever. It is presumed the ship would not have come into port except to receive repairs or to obtain supplies, and therefore it is not to be supposed that she would leave the port in the same condition as that in which she arrived, that is, without having her fighting efficiency increased beyond what it was when she entered.

"The Government has had in mind the principle laid down by Mr. Clay, Secretary of State, in the case of the privateer *Juncal* which put in at Baltimore for repairs after an action at sea with a Brazilian cruiser. Mr. Clay stated:

" 'Whilst you will not fail to allow her the usual hospitality, and to procure the necessary refreshments, the President directs that you will be careful in preventing any augmentation of her force and her making any repairs not warranted by law. With respect to the latter article, the reparation of damages which she may have experienced from the sea is allowable, but the reparation of those which may have been inflicted in the action is inadmissable.'

"In the opinion of the Government, a foul bottom is clearly a damage which the *Prinz Eitel Friedrich* 'experienced from the sea.' " (Ibid, p. 830.)

The Prinz Eitel Friedrich was subsequently interned in the United States.

Reconversion of interned vessels of war.—In 1915 question was raised in regard to the repairs and changes which the German authorities desired to have made in the converted vessels *Kronprinz Wilhelm* and *Prinz Eitel Friedrich* then interned at Norfolk, Virginia. In the communication, it was stated,

"Internment conditions should not stand in the way of starting the work, since Article 24 of the second [thirteenth?] Hague convention only makes it the duty of a neutral power to take such measures as it considers necessary to render the interned ship incapable of taking the sea during the war. The ship can thus be prevented from putting to sea by removing such parts as are important to her propulsion, screws, cylinder heads, and so forth, and, if, in addition, the neutral state places the ship's officers and men under sufficient restraint to prevent them from again joining their home-fighting forces, it discharges all its neutral obligations.

"Internal improvements do not impair the ship's internment and, in the present case, it is all the more so as the proposed work will divest the steamers of the characteristics of a warship.

"The repairs do not constitute any warlike operation but a purely business proposition, the sole object of which is to save expenses later." (1915 U. S. Foreign Relations, Supplement, p. 839.)

In the reply of the Secretary of State to the German Ambassador it was said,

WASHINGTON, *December 22, 1915.*

"EXCELLENCY: I have the honor to acknowledge the the receipt, in due course, of your note of November 11, 1915, relative to the applications made by the commanders of the interned German vessels *Kronprinz Wilhelm* and *Prinz Eitel Friedrich* for permission for those ships to be put in full repair, and, in the case of the *Kronprinz Wilhelm*, for permission to begin the restoration of passenger accommodations.

"In reply I have the honor to say that, after full reconsideration of the question of the repairs proposed to be made on these two vessels, I regret to inform you that this Government can not consent to the extensive repairs desired to be made so long as they involve the reconversion of the vessels into merchant ships and the consequent loss of their naval character. The position of this Government is briefly that

internment applies to vessels stamped with a naval character, and some question may arise as to the exercise of the right of interning the vessels in question and their officers and crews, if they were allowed to assume a merchant character." (Ibid, p. 843.)

British instructions, 1915.—Certain instructions were issued for the conduct of armed merchantmen on October 20, 1915, but were not made public till March 3, 1916. Among these was the following:

"(4) The status of a British armed merchant vessel can not be changed upon the high seas." (1917 Naval War College, International Law Documents, p. 154.)

Chilean note, 1915.—In a note to the diplomatic agents accredited to Chile, the position of that Government was made known upon the subject of reconversion of auxiliary vessels. In this note it was intimated that the principles enunciated would be "in conformity with the general convenience of the American Continent."

"Ministry of Foreign Relations,
Santiago, March 15, 1915.

"To the Minister:

"This ministry has examined with a particular interest the question which has been submitted to it by the British Government in a note of February 4 last, relating to the possibility, for English merchant vessels which have served up till the present as auxiliary vessels of the British fleet, to resume their status of merchant vessels and to be treated in this capacity in the Chilean jurisdictional waters.

"The Second International Conference of Peace assembled at The Hague in 1907 authorized in convention vii the transformation of merchant vessels into vessels of war, determining at the same time measures intended to prevent abuses especially in reference to the reestablishment of the privateer, abolished by the Declaration of Paris of 1856.

"But neither the said conference nor the London Naval Conference of 1909 have regulated all the matters relative to maritime war and notably that of the reconversion to merchant vessels of vessels which, having formerly had this character, have subsequently been converted into vessels of war or auxiliaries to the armed fleet.

"Conformably to the general principles of international law the governments of neutral countries can regulate cases not provided for conventionally and apply in their jurisdictional waters the regulations which they adopt. The preamble of convention xiii of The Hague formally recognizes this right.

"The Government of Chile desires to settle the question suggested by the note above indicated according to the attitude of strict neutrality adopted by it since the beginning of the war and also in conformity with the general convenience of the American Continent, since the great European conflict has demonstrated in an evident manner that international rules should in the future take into consideration the particular conditions of this hemisphere.

"Inspired by this idea, the Chilean Government sees no inconvenience in admitting into the ports and jurisdictional waters of Chile and in treating in all respects as merchant vessels, vessels which have been auxiliaries of the fleet of one of the belligerent States, when the said vessels fulfill the following conditions:

"1. That the auxiliary vessel has not violated Chilean neutrality;

"2. That the reconversion took place in the ports or jurisdictional waters of the country to which the vessel belongs or in the ports of its allies;

"3. That this was effective; that is to say, that the vessel neither in its crew nor in its equipment gives evidence that it can be of service to the armed fleet of its country in the capacity of an auxiliary, as it was formerly;

"4. That the Government of the country to which the vessel belongs communicates to all interested nations, and in particular to neutrals, the names of auxiliary vessels which have lost this status to resume that of merchant vessels; and

"5. That the same Government give its word that the said vessels are not in the future intended for the service of the armed fleet in the capacity of auxiliaries.

Alejandro Lira."

(1916 Naval War College, International Law Topics, p. 28.)

Conversion of auxiliary ships.—It is evident that the conversion of auxiliary ships into merchant vessels was contemplated in 1928 in spite of the opposition which had been displayed in earlier years. Article 13 of the Habana Convention on Maritime Neutrality, to which

the United States is a party, under the general section on Duties and Rights of Belligerents is as follows:

"ARTICLE 13. Auxiliary ships of belligerents, converted anew into merchantmen, shall be admitted as such in neutral ports subject to the following conditions:

"1. That the transformed vessel has not violated the neutrality of the country where it arrives;

"2. That the transformation has been made in the ports or jurisdictional waters of the country to which the vessel belongs, or in the ports of its allies;

"3. That the transformation be genuine, namely, that the vessel show neither in its crew nor in its equipment that it can serve the armed fleet of its country as an auxiliary, as it did before;

"4. That the government of the country to which the ship belongs communicate to the states the names of auxiliary craft which have lost such character in order to recover that of merchantmen; and

"5. That the same government obligate itself that said ships shall not again be used as auxiliaries to the war fleet." (Report of the American Delegates, Sixth International Conference of American States, Habana, 1928, p. 220; post p. 41.)

While there might be question as to the propriety of placing this article under the section on duties and rights of belligerents, by its provisions the article seems to place upon the neutrals certain duties in regard to the admission of converted auxiliary ships.

(a) (3) *The "Xebe" and state B.*—The 1928 Habana Convention on Maritime Neutrality, article 13, made provision for admission to neutral ports of auxiliary ships of belligerents which had been converted anew into merchantmen. The implication was that such ships by conversion reverted to a former merchant status. The events of the World War had brought to the attention of some of the South American states the treatment of such vessels in South American ports.

There had been, particularly since the Second Hague Conference, 1907, much discussion of the rights of conversion of merchant vessels into vessels of war and their reconversion. The opinion of states seemed to be gen-

erally unfavorable to admitting such a right though no conclusion was reached in 1907.

The 1928 Habana convention article could not be stated to be a principle of international law binding states not parties to the convention, but merely a conventional agreement among parties to the convention.

Unneutral service and neutrals.—Unneutral service to one belligerent by a neutral vessel makes that vessel liable to treatment by the other belligerent as an enemy vessel. The neutral state whose flag the vessel flies assumes no responsibility for its conduct. It would be very difficult or impossible for a neutral state to supervise the conduct of all vessels sailing under its flag. The neutral state does, however, usually notify its nationals that it will not protect them in acts which are contrary to neutrality.

The carriage of contraband is at the risk of the carrier, the disregard of blockade regulations is at the risk of the vessel, and engaging in unneutral service makes the party concerned liable to penalty if taken by the belligerent. The neutral state would be involved only when it permits in its jurisdiction acts which might be construed as use of its territory as a base.

Vessels liable to attack.—Not all enemy vessels are liable to attack though the right to approach and visit in time of war is generally admitted except for neutral public vessels, and some enemy vessels may be attacked at sight.

Professor Hyde, in referring to public vessels, says:

"The absence of armament on a public vessel (not exempt from capture) has not been deemed to offer a sufficient reason why an enemy force should not attack it at sight. The exercise of this right does not appear to be limited to circumstances when attack or destruction is the only means of preventing escape. The unarmed public ship seems to be regarded as without the right to demand opportunity to surrender prior to attack even under circumstances when neither resistance nor flight would otherwise be attempted. Thus the existing practice excuses if not encourages reckless disregard of human life; for

the burden is on the ship to make special efforts to surrender before it is attacked."

"Even if it be admitted that the character of a public ship is always such as to justify the employment by the enemy of whatever force is necessary in order to reduce it to control, it does not follow that the use of force unnecessary to accomplish that end is always likewise justified. It is believed, therefore, that the attack upon such a vessel at sight should be confined to cases where the immediate use of force appears to be the only means of preventing the escape of the ship, or of interference with the attempt to effect its capture by another vessel of the same belligerent or by some other external force exerted in its behalf. The reasonableness of demanding restraint on the part of the enemy must be apparent in the case where the unarmed public vessel is, when encountered, known to be employed on a service unrelated to the prosecution of the war." (2 Hyde, International Law, p. 464.)

Attitude of Ecuador, 1914.—By a decree of November 28, 1914, Ecuador took action beyond that taken in its proclamation of neutrality of August 17, 1914, in which it had decreed strict observance of neutrality in accord with the Hague Convention of 1907 on the rights and duties of neutrals and in accord with the principles of international law.

The decree stated that:

"To the rules of the Convention of The Hague, to which the Government of Ecuador has resolved to conform, are added the following:

"1st. No merchant ship, no matter what be its nationality nor whether it belongs to a belligerent country or not, shall be allowed to leave an Ecuadorian port unless the authorities of the port have previously obtained from the consul of the nationality to which the ship belongs, a written certificate indicating the next port at which the ship will stop, as also its final destination, and stating that the ship's voyage is for commercial purposes only;

"2d. Whenever a case should arise in which a merchant ship had left or intended to leave an Ecuadorian port, and should have been an unusual time on its voyage to the port of its destination or should have taken an unusual route, or were not to have taken the direction stated by the consul; or, finally, should it, before reaching port, have changed its cargo, such a ship

shall be regarded as suspicious and on its next arrival at an Ecuadorian port may be detained by the Ecuadorian naval authorities and is liable to be considered as part of the belligerent forces of the Nation to which it belongs and to be treated as such." (1916 Naval War College, International Law Topics, p. 57.)

Nicaraguan attitude, 1914.—In a circular issued by Nicaragua, December 5, 1914, provision was made for internment of merchant vessels regardless of nationality if their conduct had been such as to involve suspicion. This circular contained the following statement:

"Fourth, mercantile vessels of any nationality that arrive at Nicaraguan ports under suspicious circumstances, such as having made false statements regarding their destination when sailing from a port of the Republic on a former occasion; being known, by official notice, to have supplied fuel or provisions to war vessels of belligerents; having employed an excessive length of time in their voyage; being painted with colors peculiar to war vessels or with similarly distinctive signs, shall be interned in their respective ports, the respective authorities of which shall immediately inform the Office of Foreign Affairs of the necessary ulterior measures." (1916 Naval War College, International Law Topics, p. 65.)

Action of Argentine, 1914–15.—In General Orders of December 26, 1914, the Government of Argentine decreed,

"ART. 3. When it is proven that a merchantman has transferred, by its own act, to war vessels the fuel which it has aboard, either as cargo or for its own necessary consumption, it shall be considered as an auxiliary to the war fleet, and the maritime authorities shall refuse * * * being governed by considerations of the case * * * to provide coal for the other boats in the same company." (1917 Naval War College, International Law Documents, p. 30.)

By a decree of January 22, 1915, internment was decreed for a vessel of belligerent nationality which had accompanied the German fleet,

"From conclusions based upon the adjoined documents signed by the captain of the German steamer *Seydlitz* upon putting in at the port of San Antonio Oeste, and by the captain of the

English bark *Drummuir* upon his disembarkation at the harbor of this city that the first-named steamer made part of the German South Atlantic and Pacific division from the 3d to the 8th of September last, to which it was ordered to go by the chief of that naval force, having on board the crew of the bark sunk by the cruiser *Leipzig*, for which circumstance it should be considered as an auxiliary boat of the German division, and for this reason unable to remain in an Argentine port more than twenty-four hours without infringing the neutrality laws.

"*The President of the Argentine Nation decrees that:*

"ARTICLE 1. The minister of the navy shall take action to have the German steamer *Seydlitz*, which has taken refuge in the port of San Antonio Oeste since the 18th of last December, convoyed by an Argentine vessel to Puerto Militar, where it shall be interned until the end of the present war." (Ibid, p. 31.)

The Argentine Government also interned other vessels engaged in auxiliary service of the belligerents.

Supplying vessels of war at sea.—In March 1915 by a joint resolution, Congress aimed to restrict the furnishing of supplies from American ports to belligerent vessels of war at sea. The resolution was stated as follows:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That, from and after the passage of this resolution, and during the existence of a war to which the United States is not a party, and in order to prevent the neutrality of the United States from being violated by the use of its territory, its ports, or its territorial waters as the base of operations for the armed forces of a belligerent, contrary to the obligations imposed by the law of nations, the treaties to which the United States is a party, or contrary to the statutes of the United States, the President be, and he is hereby, authorized and empowered to direct the collectors of customs under the jurisdiction of the United States to withhold clearance from any vessel, American or foreign, which he has reasonable cause to believe to be about to carry fuel, arms, ammunition, men, or supplies to any warship, or tender, or supply ship of a belligerent nation, in violation of the obligations of the United States as a neutral nation.

"In case any such vessel shall depart or attempt to depart from the jurisdiction of the United States without clearance for any of the purposes above set forth, the owner or master or person or persons having charge or command of such vessel

shall severally be liable to a fine of not less than $2,000 nor more than $10,000, or to imprisonment not to exceed two years, or both, and, in addition, such vessel shall be forfeited to the United States.

"That the President of the United States be, and he is hereby, authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this resolution.

"That the provisions of this resolution shall be deemed to extend to all land and water, continental or insular, within the jurisdiction of the United States.

"Approved, March 4, 1915." (1915 U. S. Foreign Relations, Supplement, p. 851; 38 U. S. Stat., p. 1226.)

The "Farn," 1915.—The *Farn*, a British steamer, left Cardiff about September 5, 1914, with a provision "in her charter to deliver coal to warships if they so desired." The *Farn* was captured and a German prize crew was put on board. The *Farn*, or *KD–3* as she seems to have been called, was for about 3 months used by the German captors when she put in to San Juan, Porto Rico, for provisions and water. The United States Government decided to treat the *Farn* as an auxiliary in service of the German fleet.

As the *Farn* had not been condemned by a prize court, the British Ambassador maintained that the *Farn* should be treated as a prize which should be released under article 21 of Hague Convention XIII of 1907. The reply of the Secretary of State was that, as a result of investigation, it had been determined to order the vessel to leave port within 24 hours, and "upon failure to leave, that the vessel, together with the prize officers and crew, be interned, the British officers and crew and the Chinese seamen being released."

"Later, in reply to a further communication of the British Ambassador, the Department of State said:

"Your excellency states that it would be necessary before the vessel could be treated as a German fleet auxiliary that she should have been condemned by a competent prize court. With this conclusion the Government of the United States is under the necessity of disagreeing. In the opinion of this

Government an enemy vessel which has been captured by a belligerent cruiser becomes as between the two governments the property of the captor without the intervention of a prize court. If no prize court is available this Government does not understand that it is the duty of the captor to release his prize, or to refuse to impress her into its service. On the contrary, the captor would be remiss in his duty to his Government and to the efficiency of its belligerent operations if he released an enemy vessel because he could not take her in for adjudication.

"As to Article 21 of Hague Convention No. XIII of 1907 cited by your excellency as prescribing the treatment to be accorded to the *Farn*, it is only necessary to state that as it appears that His Majesty's Government has not ratified this convention it should not be regarded as of binding effect between Great Britain and the United States.

"In this relation I venture to call to your attention that the British Consul at San Juan protested on January 12 against the clearance of the *Farn*, and that your excellency in your note of January 13 requested that she be detained in the interest of neutrality. It was not until January 17 that your excellency informed the Department that His Majesty's Government presumed that the United States would act under Article 21 of Hague Convention No. XIII of 1907 in regard to the release of the vessel. Sufficient time had thus elapsed to allow for communication with British warships and their appearance off the port of San Juan. The result of releasing a German prize loaded with coal at this juncture needs no comment.

"In the circumstances the Government of the United States is under the necessity of adhering to its decision to intern until the end of the war the steamship *Farn* as a fleet auxiliary." (1915 U. S. Foreign Relations, Supplement, p. 823.)

Habana Convention on Maritime Neutrality, 1928.—The Habana Convention on Maritime Neutrality of February 20, 1928, was ratified by the United States and proclaimed in 1932 (Treaty Series 845). This convention had been considered at the Sixth International Conference of American States. As the report of the delegates of the United States of America states:

"The result was a modified draft, in large measure that of the thirteenth convention of the Second Hague Peace Conference of 1907, with sundry modifications and additions in order to take note of the measures which neutrals had taken to pre-

serve their rights during the World War. As finally drafted and originally adopted, the project presupposed a war, in which the American Republics would be neutral. For this reason it was indispensable that the practice of nations should be strictly observed, as it would be undesirable on the part of the American states to attempt to change the general rights of all neutrals by a special agreement of their own. There is, however, an American Republic without access to the sea. The Bolivian delegation proposed a modification of the general rule in case of war between American Republics, to the effect that the project should contain a clause, by virtue whereof neutral states should be obliged to permit the transportation of materials of war through their territories to an American state thus shut off from the sea, provided the neutral states should not consider that their vital interests were affected. The delegation of the United States conceived this to be a just provision under the circumstances, and voted for it. It was adopted as the second paragraph of Article 22, with a reservation on the part of Chile.

"The Argentine delegation proposed in committee amendments which it had suggested in the subcommittee. One of these, to the effect that armed merchantmen should be assimilated to auxiliary vessels in the service of belligerents, was carried and forms the last sentence of Article 12 of the convention. To this, the United States interposed a reservation, as did likewise Cuba and Uruguay. The convention was adopted in the plenary session of February 18, Chile and the United States expressly maintaining at the time of signing, their respective reservations." (Report of the Delegates of the United States of America to the Sixth International Conference of American States (1928), p. 18.)

(b) *The "Dobo" and commerce of state Y.*—Article 22 of the 1928 Habana Convention on Maritime Neutrality makes provision in regard to commerce between neutral and belligerents. This article also makes special provision for certain American states in regard to transit of goods.

In general neutral states are not under obligation to prevent shipments of cargo from their ports though the destination and character of the cargo may be determining factors in the treatment of the shipments by the belligerents. Habitual use of a neutral port as a source of supply for belligerent vessels of war may give

rise to questions in regard to the use of neutral territory as a base but the shipment of cargo from a belligerent port to a neutral port would not involve such questions. A neutral vessel which delivers supplies to a belligerent vessel of war may be considered by the opposing belligerent to have engaged in unneutral service but the risk rests upon the neutral vessel. Such a vessel would not be regarded as an auxiliary of the navy of the belligerent which would imply conversion, a recognized procedure in international law. Unneutral service by a neutral vessel does not put neutral states under obligations, but gives the belligerent rights of capture.

Asylum in neutral ports.—The question of asylum has long been a subject of discussion. The Institut de Droit International almost from its founding in 1873 gave attention to matters relating to capture, prize, and treatment of belligerent vessels by neutrals. Among the resolutions adopted in 1898 after discussion was the following on the Regulations Concerning the Legal Status of Ships and their Crews in Foreign Ports:

"Article 24. Granting of asylum to belligerents in neutral ports, although depending upon the pleasure of the sovereign State and not required of it, shall be presumed, unless previous notification to the contrary has been given.

"With regard to war-ships, however, it shall be limited to cases of real distress, in consequence of: 1. defeat, sickness, or insufficient crew; 2. perils of the sea; 3. lack of the means of subsistence or locomotion (water, coal, provisions); 4. need of repairs.

"A belligerent ship taking refuge in a neutral port from pursuit by the enemy, or after having been defeated by him, or because it has not a sufficient crew to remain at sea, shall remain therein until the end of the war. The same rule shall apply if it is carrying sick or wounded, and after having landed them, is in condition to go into action. The sick and wounded, though received and cared for, shall, after they have recovered, be also interned, unless considered unfit for military service.

"Refuge from the perils of the sea shall be granted to war-ships of belligerents only so long as the danger lasts. No greater quantity of water, coal, food or other analogous sup-

plies shall be furnished them than is necessary to enable them to reach their nearest national port. Repairs shall not be allowed except so far as necessary to enable them to put to sea. Immediately thereafter the ship shall leave the port and neutral waters." (Resolutions of the Institute of International Law, Carnegie Endowment for International Peace translation, p. 154.)

In the discussion of this article M. Kleen, one of the reporters upon the subject, referred to the third paragraph,

"Quant à l'asile à accorder aux navires en fuite, la solution du problème devient plus difficile encore que lorsqu'il s'agit de cas de détresse par suite d'événements naturels. A défaut d'occasions, on ne possède pas, à ma connaissance, un seul exemple de leur internement dans le port où ils se sont réfugiés devant l'ennemi, à l'instar de ce qui se passe sur terre. Mais il est clair que si, dans les conditions actuelles, les neutres permettaient aux bâtiments combattants de se réfugier chez eux devant une poursuite ou après une défaite, pour en ressortir après dans des conditions plus favorables, l'autre belligérant addresserait des réclamations très vives au souverain du port devenu ainsi un point d'appui pour lui arracher les fruits de sa supériorité. Dans la doctrine, on s'est peu occupé de la question; toutefois, ceux qui l'ont résolue dans le même sens que l'article ci-dessus, sont assez nombreux et considérables pour faire autorité.

"La permission pour un navire belligérant de retourner au combat après avoir complété son équipage dans un port neutre équivaudrait évidemment à une aide d'enrôlement, tout marin sur un bâtiment de guerre pouvant participer au combat." (17 Annuaire de l'Institut de Droit International, 1898, p. 68.)

The question of asylum in neutral ports again received the attention of the Institute in 1910 and was discussed in this Naval War College in 1911 (1911 Naval War College, International Law Situations, pp. 9–36).

American treaties.—Many American treaties of the nineteenth century had been similar to the treaty between the United States and Peru of 1887:

"Article XIII. When through stress of weather, want of water or provisions, pursuit of enemies or pirates, the vessels of one of the high contracting parties, whether of war, (public or private,) or of trade, or employed in fishing, shall be forced to

seek shelter in the ports, rivers, bays, and dominions of the other, they shall be received and treated with humanity; sufficient time shall be allowed for the completion of repairs, and while any vessel may be undergoing them, its cargo shall not unnecessarily be required to be landed either in whole or in part; all assistance and protection shall be given to enable the vessel to procure supplies, and to place them in a condition to pursue their voyage without obstacle or hindrance." (25 Stat., 1444, 1450.)

The case of the "Pisa."—In a note of the German Embassy, March 26, 1915, it was stated that the *Pisa* of the Hamburg-American Line was to apply for clearance papers from New York to Hamburg and that the *Pisa* would try to communicate with a German cruiser in the Atlantic, to which it was maintained no objection could be made as no German vessel of war had taken supplies in this region within three months. The German Embassy referred to the note of the Department of State, December 24, 1914, in which it was stated that

"the essential idea of neutral territory becoming the base for naval operations by a belligerent is, in the opinion of this Government, *repeated* departure from such territory of merchant vessels laden with fuel or other supplies for belligerent warships at sea." (1914 U. S. Foreign Relations, Supplement, p. 648.)

Of this the German note of March 26, 1915, said,

"As already mentioned, no supplies for the German men-of-war involved here left the United States of America within the last three months. The words 'for belligerent warships at sea' make it clear, that it is immaterial whether the warship to be supplied is *in* port, *off* a port, or on the high sea. As a matter of fact in all three cases the only difference would be in the distance covered by the supply-carrying conveyance. Therefore no international law or agreement establishes such a difference. Nor is there any distinction made between furnishing supplies for a home journey or any other purpose. In fact, according to international law, there seems to be only one restriction put to supplying belligerent warships: that one ship can not be supplied from the same neutral port more than once within three months.

"It is obvious that it is for the party making the charge that such supplies have been furnished more than once within three months, to prove the charge by substantiated evidence.

"The Embassy must assume that the rules laid down in Mr. Bryan's note of December 24, 1914 are still in force. The resolution passed by Congress and promulgated on March 4, does not seem to alter any existing laws, but appears to empower the Executive to enforce laws already in existence." (1915 U. S. Foreign Relations, Supplement, p. 859.)

In replying to this statement, the Acting Secretary of State, on April 10, 1915, said:

"The memorandum quotes from the Department's note of December 24 last to the effect that the essential idea of neutral territory becoming the base for naval operations is repeated departure from such territory of merchant vessels laden with fuel or other supplies for belligerent warships at sea, and the memorandum draws the conclusion from Hague Convention No. XIII of 1907, that the word 'repeated' means 'more than once in three months.' The argument appears to be that, inasmuch as no supplies for German men-of-war have left the United States within three months, no objection ought to be raised to the clearance of the *Pisa* though it is admitted that she intends to transfer her cargo, if possible, to a German cruiser on the high seas.

"It is true that the Department's note of December 24 discussed the meaning of 'base of operations,' but it was also pointed out that the obvious result of the practice of sending supplies to warships at sea, would be that such warships could remain on their stations engaged in belligerent operations without the inconvenience of repairing to port for supplies. Both of these assertions must be considered as they present different phases of the same question. It is the opinion of this Government that the result of supplying warships in order that they may avoid the danger or inconvenience of visiting a neutral port would be in contravention of the rules of international law and the provisions of Hague Convention No. XIII. Both Articles 19 and 20 of that convention indicate unquestionably that the coaling of warships from stores gathered at a neutral port or roadstead is to take place *in* that port or roadstead, and these provisions are regarded as consonant with the existing rules of international law on the subject. It is obvious that to carry fuel and supplies to a warship on its station at sea is not furnishing her with fuel within a neutral port. I am, therefore, under the necessity of disagreeing with your statement that 'it is imma-

terial whether the warship to be supplied is *in* port, *off* port, or on the high seas.'

"The reasons for this rule are evident, when its application is considered. In the first place, as only sufficient coal and supplies may be furnished a warship to enable it to reach its nearest home port, neutrals must, in order to determine the amount, be specifically advised of the size of the vessel, the number of the crew, the amount of fuel and supplies already on board, and the place of transshipment. Without knowledge of these facts it would be impossible to limit the cargo of a vessel so that the warship could not take on board more coal or supplies than the rule of international law permits. In the second place after the departure of a supply boat from the jurisdiction of the United States, this Government would have no control over the vessel to prevent delivery to a different warship from the one supposed to be entitled to replenishment, even though the supplies furnished far exceeded the amount permitted by international law. In the third place, as a belligerent warship may not, in any event, supply itself in the ports of a neutral power more than once in three months, a neutral government, before allowing coal and supplies to be taken to a belligerent warship from its ports, should be satisfied that none had been obtained by the same vessel within the preceeding three months. This information can be had only from the warship itself, unless it has during the period entered a neutral port, or been in direct communication therewith. In any event the amount of the stores to be supplied, and the time when they may properly be furnished are questions of fact, and not matters of presumption.

"Furthermore, the allowance of coal and supplies by a neutral to a belligerent warship is based on the presumption that the latter intends to return to its home port. There can, however, be no such presumption in the present case. In fact the presumption is that no German warship would attempt to return home when there is a virtual investment of German ports by hostile naval forces. On the contrary it may be assumed with reasonable certainty that a German warship which remains on the high seas, purposes to take supplies in order to continue hostile operations against vessels of belligerent nationality and to intercept and search neutral vessels. If, therefore, such a warship is supplied with an amount of coal and supplies in excess of the amount permitted by law, the neutral territory from which such stores are derived, would clearly constitute a depot for the projection of the naval operations of a belligerent in contravention of the rules of international law and

Article 5 of Hague Convention No. XIII of 1907." (Ibid, p. 862.)

Entrance of vessels of war in time of peace.—While it was formerly common to permit foreign vessels of war to enter ports in time of peace, in recent years restrictions have been placed on such entry. This is partly due to the change in the character of vessels of war from the comparatively weak sailing vessels to the battleships of modern navies.

Regulations varying in strictness were general even before the World War. The customary requirement was prior diplomatic notice, sometimes of a specified number of days.

Certain named ports were closed to entrance of vessels of war and sometimes to merchant vessels also.

The restriction as to the number of vessels that might enter in time of peace was also common. The time of sojourn was usually specified.

Of course, local port regulations were to be observed by visiting vessels of war, and quarantine regulations also prevailed even for public vessels.

To closed ports admission in time of peace may be permitted to vessels in distress for any reason. The argument is that the rights of humanity take precedence over regulations dictated by political or strategic expediency. In time of war the same liberality of interpretation does not prevail.

Norwegian rules, 1912.—The Norwegian rules of December 18, 1912, in time of peace proclaimed that,

"War vessels of belligerent powers are permitted to enter ports and roadsteads as well as other territorial waters of the kingdom. At the same time admission is subject to the exceptions, restrictions, and conditions which follow:

"1. (a) It is forbidden belligerent war vessels to enter the ports and roadsteads of war, which have been proclaimed as such.

"(b) It is also forbidden such vessels to enter inner territorial waters whose entrances are closed by submarine mines or other means of defense.

"(c) The King reserves the right to forbid under the same conditions to the two belligerent parties, access to other Norwegian ports or roadsteads and other defined parts of the interior Norwegian waters, when special circumstances demand and for safeguarding the sovereign rights of the kingdom and to maintain its neutrality.

"(d) The King also reserves the right to forbid access to ports and roadsteads of the kingdom to belligerent war vessels which have neglected to conform to rules and prescriptions promulgated by the competent authorities of the kingdom and which have violated its neutrality." (1917 Naval War College, International Law Documents, p. 184.)

A general regulation applied to all warships of foreign nationality as prescribed in royal ordinances of January 20, 1912, August 21, and September 11, 1914.

"No foreign war vessels except those mentioned in article 4 can enter the Norwegian war ports or naval stations without having obtained the authorization of His Majesty the King or of the persons authorized by him to this effect.

"It is necessary to indicate in advance the types and names of war vessels for which the authorization to enter Norwegian war ports or naval stations is solicited, as well as the date of arrival and duration of sojourn.

"Without special authorization in extraordinary cases the sojourn in a war port or naval station can not exceed eight days, and in general no more than three war vessels belonging to the same nation will be permitted to sojourn simultaneously in the same port." (Ibid, p. 187.)

The excepted classes mentioned under article 4 were:

"(a) Every war vessel on which the Chief of State of a foreign nation is traveling and the vessels which convoy it.

"(b) War vessels which find themselves in immediate danger from the sea, which are always permitted to have recourse to the ports of the kingdom.

"(c) War vessels intended for or engaged in the surveillance of fisheries or of hydrographic work and other scientific objects." (Ibid, p. 188.)

Similar rules were issued by other Scandinavian states.

Rules in World War.—The rules announced by neutral states during the World War varied somewhat,

but usually aimed to restrict repairs to a limit which would not make the port a base and thus make the neutral state liable.

The Brazilian rules stated on August 4, 1914,

"ART. 13th. The belligerent warships are allowed to repair their damages in the ports and harbors of Brazil only to the extent of rendering them seaworthy, without in any wise augmenting their military power.

"The Brazilian naval authorities will ascertain the nature and extent of the proper repairs, which shall be made as promptly as possible." (1916 Naval War College, International Law Topics, p. 11.)

The proclamations of other states were to similar effect.

In the discussion of sojourn for repairs at the Second Hague Peace Conference, 1907, the Brazilian delegation presented a lengthy memorandum upon asylum in neutral ports in course of which it was said,

"(7) When a belligerent war-ship takes refuge in a neutral port or territorial waters, to escape pursuit by its enemy, if it is unable to complete the necessary repairs or to take on sufficient supplies to enable it to put to sea within the period allowed it, that is to say twenty-four hours, it is preferable, as a guaranty, for the neutral State to intern it until the end of the war.

"That is the surest way of conforming to the true spirit of neutrality. This would not be too rigorous a proceeding, for the necessity of closing the ports to these vessels would thus be avoided, which closing might entail heavy damages, and moreover the complications which the difficulty of this delicate question might lead to would be avoided.

"We can here proceed in the same manner only in the case of vessels in distress as the result of damage caused by the condition of the sea.

"In this last case the solution accepted by all is to allow the vessel admitted under these conditions to depart freely; but if this is done and if in a particular case the vessel is given refuge, this would be a first infringement of the principle of the inviolability of neutral ports and waters, which infringement would naturally be regarded as complete, if the belligerent vessel is not subsequently required to depart upon the expiration of

the customary period of twenty-four hours in these ports or waters.

"Humanitarian considerations should undoubtedly decide neutrals to receive a pursued belligerent vessel, this aid being indispensable to enable it to escape a danger which might seriously jeopardize the situation of those on board or expose the vessel to certain loss unless it takes refuge in the first port it comes to.

"But when this duty is once performed and the established rules covering the matter have been set aside to give way only to Christian sentiments, which demand not only that the vessel be admitted, but even that the neutral go to its aid to save it maintenance of his neutrality by the neutral requires that these vessels be held in the neutral's ports and waters and disarmed there, and that they shall not take any further part in hostilities for the duration of the war." (III Proceedings Hague Peace Conferences, Carnegie Endowment translation, p. 586.)

At the Second Hague Peace Conference frequent mention had been made of the rules of the Treaty of Washington of 1871 under which the *Alabama* award had been made. The British proposal on the subject of asylum from enemy pursuit had been as follows:

"ARTICLE 15. When a war vessel of a belligerent takes refuge in neutral waters in order to escape pursuit by the enemy it is incumbent upon the Government of the neutral State to intern it until the end of the war." (Ibid, p. 699.)

Article 17 of the Hague Convention XIII which was adopted by the conference in 1907 provides:

"In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible delay."

This rule has been generally reaffirmed.

Netherlands declaration, 1914.—While opposition was voiced against the Netherlands declaration of August 5, 1914, the Netherlands Government continued to enforce its provisions in order to ensure its neutrality. Articles 4 and 5 of this declaration provide the general rule and the exception.

"ART. 4. No warships or ships assimilated thereto belonging to any of the belligerents shall have access to the said territory.

"ART. 5. The provisions of article 4 do not apply to:

"1. Warships or ships assimilated thereto which are forced to enter the ports or roadsteads of the State on account of damages or the state of the sea. Such ships may leave the said ports or roadsteads as soon as the circumstances which have driven them to take shelter there shall have ceased to exist.

"2. Warships or ships assimilated thereto belonging to a belligerent which anchor in a port or roadstead in the colonies or oversea possessions exclusively with the object of completing their provision of foodstuffs or fuel. These ships must leave as soon as the circumstances which have forced them to anchor shall have ceased to exist, subject to the condition that their stay in the roadstead or port shall not exceed 24 hours.

"3. Warships or ships assimilated thereto belonging to a belligerent employed exclusively on a religious, scientific, or humanitarian mission." (1916 Naval War College, International Law Topics, p. 62.)

In article 5 there is a distinction made between admission to the continental waters (art. 5—1) and admission to waters of the colonies or overseas possessions (art. 5—2). In the first case, exception is made for "damages or the state of the sea." In the colonies and overseas possessions, exception is made for fuel and foodstuffs. Owing to the limited coast line and few ports, it could not be expected that belligerents who had used any reasonable degree of care would be compelled to resort to a Dutch port for supplies or fuel.

United States-Panama agreement, October 10, 1914.—During the period before the United States entered the World War, questions in regard to the treatment of vessels entering ports under American jurisdiction often arose. In the relations between the United States and Panama a protocol stated the attitude of these parties.

"Protocol of an agreement concluded between Honorable Robert Lansing, Acting Secretary of State of the United States, and Don Eusebio A. Morales, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama, signed the tenth day of October, 1914.

"The undersigned, the Acting Secretary of State of the United States of America and the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama, in view of the close association of the interests of their respective Governments on the Isthmus of Panama, and to the end that these interests may be conserved and that, when a state of war exists, the neutral obligations of both Governments as neutrals may be maintained, after having conferred on the subject and being duly empowered by their respective Governments, have agreed:

"That hospitality extended in the waters of the Republic of Panama to a belligerent vessel of war or a vessel belligerent or neutral, whether armed or not, which is employed by a belligerent power as a transport or fleet auxiliary or in any other way for the direct purpose of prosecuting or aiding hostilities, whether by land or sea, shall serve to deprive such vessel of like hospitality in the Panama Canal Zone for a period of three months, and *vice versa*.

In testimony whereof, the undersigned have signed and sealed the present Protocol in the city of Washington, this tenth day of October, 1914.

ROBERT LANSING
EUSEBIO A. MORALES"

(1916 Naval War College, International Law Topics, p. 94; 38 Stat. 2042.).

In accord with this protocol a neutral vessel, whether or not armed, if directly employed for aiding hostilities by land or sea might, so far as sojourn in the Canal Zone or in Panama is concerned, be treated as a belligerent vessel of war.

Proclamation, November 13, 1914.—In rules 1 and 2 of the proclamation of the President of the United States, November 13, 1914, relating to the neutrality of the Panama Canal Zone, the attitude of the United States was even more clearly stated than in the protocol with Panama of October 10, 1914.

"*Rule* 1. A vessel of war, for the purposes of these rules, is defined as follows: a public armed vessel, under the command of an officer duly commissioned by the government, whose name appears on the list of officers of the military fleet, and the crew of which are under regular naval discipline, which vessel is qualified by its armament and the character of its personnel to

take offensive action against the public or private ships of the enemy.

"*Rule* 2. In order to maintain both the neutrality of the Canal and that of the United States owning and operating it as a government enterprise, the same treatment, except as hereinafter noted, as that given to vessels of war of the belligerents shall be given to every vessel, belligerent or neutral, whether armed or not, that does not fall under the definition of Rule 1, which vessel is employed by a belligerent Power as a transport or fleet auxiliary or in any other way for the direct purpose of prosecuting or aiding hostilities, whether by land or sea; but such treatment shall not be given to a vessel fitted up and used exclusively as a hospital ship." (1916 Naval War College, International Law Topics, p. 97; 38 Stat. 2039.)

Other rules of this proclamation provide for the same treatment in passage, taking supplies, fuel, etc., for "vessels of war of a belligerent or vessels falling under rule 2." Even in case of distress, vessels "falling under rule 2" were subject to the same restrictions as vessels of war.

(*c*) *The "Xibi" in a closed neutral port.*—In time of war the extension of restrictions upon the movements of belligerent public vessels in neutral waters has been common. A state whether in time of peace or of war has jurisdiction over its territorial waters. As the character of instruments of war has changed, regulations and responsibilities have changed. It was found essential for neutrals to make different regulations for the sojourn and departure of vessels of war under sail and under steam as well as for aircraft.

Ports closed to commerce are supposed to be closed to all vessels. In a naval closed port the control and often the ownership of the fuel is usually in the government. Any aid to a belligerent naval vessel in a neutral closed port would be of the nature of aid by neutral public authority which is not lawful.

SOLUTION

(*a*) 1. The *Xara* may remain in the port of neutral state B for 24 hours unless state B has previously issued

special regulations. During the 24-hour sojourn the *Xara* may make such repairs as possible using the personnel and material on board. After 24 hours the *Xara* should be interned.

2. Unless neutral state B has previously issued special regulations, it may not decline to allow to the *Aba* the usual privileges granted to neutral merchant vessels in its harbors.

3. If neutral state B and belligerent state X are not bound by special treaty agreement, and if state B has not previously issued special regulations, state B may legally decline to admit, except under the rules for vessels of war, the *Xebe* which has been transformed from a supply to a merchant vessel.

(*b*) There is no obligation on the part of state E or other neutral states to treat the *Dobo* as an auxiliary of the navy of state Y.

(*c*) If the *Xibi*, a vessel of war of state X, enters in distress a closed port of neutral state E, the *Xibi* should be interned or may be allowed or required to depart under pledge to take no further part in the war.

SITUATION II

ACTION DURING CIVIL STRIFE

There is a disturbed condition of affairs in state O, a party to the Havana Conventions of February 1928, which is followed by an organized armed attempt by the Liberal Party to overthrow the established government of President Smith in state O. No state has recognized the belligerency of the Liberal Party.

(*a*) The *Able*, a vessel of war of the United States is in Obo, a port of state O.

(1) The *Ali*, a merchant vessel flying the flag of the United States, which vessel is reported to have been chartered to a leader of the Liberal Party, is entering the port of Obo. The local authorities, having no naval force available, request the commander of the *Able* to seize or to prevent the landing of the cargo of the *Ali*.

(2) In the port of Obo, the *Ato*, another merchant vessel flying the flag of the United States, is fitting out to cruise against the fleet of state O. The local authorities request the commander of the *Able* to seize or at least to prevent the sailing of the *Ato*.

(*b*) At night the *Armo*, a cruiser of the United States, discovers within 3 miles of the coast of the United States a merchant vessel transferring coal to a vessel of war apparently flying the flag of the Liberal Party. On discovering the *Armo*, the merchant vessel and the vessel of war flee in opposite directions before their identity is established.

(1) The commander of the *Armo* considers which vessel to pursue if either.

(2) The commander of the *Armo* decides to pursue the vessel of war, which arrives in Port Obo before the

Armo can overtake her. The *Armo* in the early morning sails out to cruise along the coast of O, and sights the vessel of war 3 miles off the coast.

(*c*) The *Ora*, originally a cruiser of state O, is seized by the Liberal Party, raises the flag of state M and puts to sea.

(1) It is met by the *Able* and makes the customary salute to the flag officer of the United States vessel of war.

(2) Later the *Ora* seizes a merchant vessel of the United States bound with a cargo of arms to a port occupied by the forces of state O. The *Ora* takes the merchant vessel to Obo. The following day the *Ora* flying the flag of the Liberal Party is seen on the high seas by the *Armo*.

What would be the lawful action in each case?

SOLUTION

(*a*) 1. The commander of the *Able* should decline the request of the local authorities, though he should warn the master of the *Ali* of the risk he runs.

2. The commander of the *Able* should decline the request of the local authorities, though he should warn the master of the *Ato* of the risk he runs.

(*b*) 1. The commander of the *Armo* should pursue the vessel of war.

2. The pursuit must not continue within the jurisdiction of state O and, when the pursuit is thus discontinued, cannot be resumed the following morning.

(*c*) 1. The commander of the *Able* should not return the salute of the *Ora* which is under a false flag.

2. The commander of the *Armo* should seize and hold the *Ora* pending instructions.

NOTES

Disturbed condition of affairs.—That there should be differences of opinion within states, and that partisans

should at times resort to the use of force in endeavoring to support their positions, is a common occurrence. Many new states have established themselves through such action. During the nineteenth century especially, uprisings ostensibly or really due to attempts to realize worthy political aims were frequent and states on the American continent looking to their own origins viewed these movements with little disfavor.

Treaties, Central American States, 1907.—On December 20, 1907, the delegates from the five Central American States, Costa Rica, Guatemala, Honduras, Nicaragua, and Salvador signed a general treaty of peace and amity at Washington.

This treaty provided, in the first article, for a Central American Court of Justice and in articles following stated that—

"ARTICLE II. Desiring to secure in the Republics of Central America the benefits which are derived from the maintenance of their institutions, and to contribute at the same time in strengthening their stability and the prestige with which they ought to be surrounded, it is declared that every disposition or measure which may tend to alter the constitutional organization in any of them is to be deemed a menace to the peace of said Republics.

"ARTICLE III. Taking into account the central geographical position of Honduras and the facilities which owing to this circumstance have made its territory most often the theater of Central American conflicts, Honduras declares from now on its absolute neutrality in event of any conflict between the other Republics; and the latter, in their turn provided such neutrality be observed, bind themselves to respect it and in no case to violate the Honduranean territory." (Foreign Relations, U. S., 1907, Part II, p. 693.)

In an additional convention of the same date it was agreed that,

"The Governments of the High Contracting Parties shall not recognize any other Government which may come into power in any of the five Republics as a consequence of a *coup d'état*, or of a revolution against the recognized Government, so long as the freely elected representatives of the people thereof have not constitutionally reorganized the country." (Ibid., p. 696.)

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Nicaragua, 1909.—The plans for overthrow of one party and the establishment of another involving domestic disturbance have sometimes been known in advance and instructions to foreign diplomatic agents have been given accordingly.

In 1909 on October 7, a telegram was received by the Secretary of State from the American consul at Bluefields that there was reason to believe,

"that a revolution will start in Bluefields on the 8th; that the State, with the present governor proclaimed provisional president, will constitute an independent republic, with Bluefields the capital; appeal will be made to Washington immediately for recognition." (Foreign Relations, U. S., 1909, p. 452.)

A telegram received by the Secretary of State October 12, reported that the provisional government was established on the tenth "without difficulty, or the firing of a shot", and that the new government "is friendly to American interests and is progressive", has granted the American consul recognition, "has formed new cabinet; and has sent him assurances in writing friendship American Government." The Acting Secretary of State sent to consul Moffatt a telegram to the following effect,

"DEPARTMENT OF STATE,
"*Washington, October 13, 1909.*

"Mr. Adee instructs Mr. Moffatt to do nothing whatever which might indicate the recognition of provisional administration, and says he should have no official intercourse with it in his representative capacity. Mr. Adee adds that if any action of the temporary power should require interposition to protect American interests Mr. Moffatt should personally and informally address whatever visible local agency may be in a position to afford de facto relief. Mr. Moffatt is directed to confine himself strictly within these limits." (Ibid., p. 453.)

Later, on November 21, 1909, the Secretary of State sent another telegram:

"DEPARTMENT OF STATE,
"*Washington, November 21, 1909.*

"Mr. Knox states that in the light of recent occurrences, particularly in regard to cases affecting American interests and

property, it is appropriate that the revolutionary party should understand that the United States reserves all claims and rights growing out of acts or omissions of the revolutionary party to which this Government or its citizens may be entitled under international law, and that such timely reservation is not to be deemed to imply admission of a full state of revolutionary belligerency with the rights and obligations attaching thereto under the doctrines of international law. Mr. Knox refers particularly to the reported action of the revolutionary party in respect to the steamer *Dictator* which is under charter of the Bluefields Steamship Co., an American corporation, and says, this Government reserves all rights in respect to the validity of any proceedings against that vessel as a prize of war, and that if the vessel is actually held by the revolutionary party it is suggested that it be released under bond from the charterers to insure her departure from Nicaragua and to engage that she shall not attempt to enter any invested port after due notice and warning of effective investment." (Ibid., p. 454.)

In spite of the fact that Nicaragua was a party to the Central American treaties of 1907 which aimed to secure peace in that area, the disturbed conditions in Nicaragua in 1909 led the Secretary of State in a long note of December 1909 to say to the Nicaraguan Chargé,

"The Government of Nicaragua which you have hitherto represented is hereby notified, as will be also the leaders of the revolution, that the Government of the United States will hold strictly accountable for the protection of American life and property the factions de facto in control of the eastern and western portions of the Republic of Nicaragua. * * *

"From the foregoing it will be apparent to you that your office of chargé d'affaires is at an end. I have the honor to inclose your passport, for use in case you desire to leave this country. I would add at the same time that, although your diplomatic quality is terminated, I shall be happy to receive you, as I shall be happy to receive the representative of the revolution, each as the unofficial channel of communication between the Government of the United States and the de facto authorities to whom I look for the protection of American interests pending the establishment in Nicaragua of a Government with which the United States can maintain diplomatic relations." (Ibid., p. 456.)

Mexico, 1916.—In reply to a Senate resolution of January 6, 1916, the Secretary of State said:

"(1) The government at present existing in Mexico is a *de facto* government, established by military power, which has definitely committed itself to the holding of popular elections upon the restoration of domestic peace.

"(2) This *de facto* Government of Mexico, of which Gen. Venustiano Carranza is the Chief Executive, was recognized by the Government of the United States on October 19, 1915, and a copy of the letter to Mr. Eliseo Arredondo, the representative of the *de facto* government at this capital, informing him of such recognition is hereto appended (inclosure No. 1). The said *de facto* government has since been recognized by substantially all the countries of Latin America; also by Great Britain, France, Italy, Russia, Japan, Austria-Hungary, Germany, and Spain; and several other countries have recently announced their intention of extending recognition. The said *de facto* government is at present maintained at Querétaro, near Mexico City.

"It can not be said that the *de facto* Government of Mexico is a constitutional government. The *de facto* government, like the majority of revolutionary governments, is of a military character, but, as already stated, that government has committed itself to the holding of elections, and it is confidently expected that the present government will, within a reasonable time, be merged in or succeeded by a government organized under the constitution and laws of Mexico." (Foreign Relations, U. S., 1916, p. 469.)

Other parts of the reply set forth the disturbed conditions in Mexico and showed what the United States had done and proposed to do in regard to the situation then prevailing. American troops were sent to the frontier to enforce the rules of neutrality and the neutrality statutes of the Federal Government.

Owing to the disturbed conditions along the frontier, a reciprocal arrangement was made between the United States and Mexico by which troops of either state might pursue lawless bands into the territory of the other.

"The Government of the United States, in view of the unusual state of affairs which has existed for some time along the international boundary and earnestly desiring to cooperate with

the *de facto* Government of Mexico to suppress this state of lawlessness, of which the attack on Columbus, New Mexico, is a deplorable example, and to insure peace and order in the regions contiguous to the boundary between the two Republics, readily grants permission for military forces of the *de facto* Government of Mexico to cross the international boundary in pursuit of lawless bands of armed men who have entered Mexico from the United States, committed outrages on Mexican soil, and fled into the United States, on the understanding that the de facto Government of Mexico grants the reciprocal privilege that the military forces of the United States may pursue across the international boundary into Mexican territory lawless bands of armed men who have entered the United States from Mexico, committed outrages on American soil, and fled into Mexico.

"The Government of the United States understands that in view of its agreement to this reciprocal arrangement proposed by the *de facto* Government the arrangement is now complete and in force and the reciprocal privileges thereunder may accordingly be exercised by either Government without further interchange of views.

"It is a matter of sincere gratification to the Government of the United States that the *de facto* Government of Mexico has evinced so cordial and friendly a spirit of cooperation in the efforts of the authorities of the United States to apprehend and punish the bands of outlaws who seek refuge beyond the international boundary in the erroneous belief that the constituted authorities will resent any pursuit across the boundary by the forces of the Government whose citizens have suffered by the crimes of the fugitives.

"With the same spirit of cordial friendship the Government of the United States will exercise the privilege granted by the *de facto* Government of Mexico in the hope and confident expectation that by their mutual efforts lawlessness will be eradicated and peace and order maintained in the territories of the United States and Mexico contiguous to the international boundary." (Ibid., p. 488.)

That there might be no fear of intervention, the Secretary of State, under authority of the President, made a public statement of policy:

"In order to remove any apprehension that may exist either in the United States or in Mexico, the President has authorized me to give in his name the public assurance that the military operations now in contemplation by this Government will be

scrupulously confined to the object already announced, and that in no circumstances will they be suffered to trench in any degree upon the sovereignty of Mexico or develop into intervention of any kind in the internal affairs of our sister Republic. On the contrary, what is now being done is deliberately intended to preclude the possibility of intervention." (Ibid., p. 489.)

This position was approved by a congressional resolution of March 17, 1916, and a detailed draft of an arrangement was proposed by Mexico, March 19, 1916. The problem of maintaining a position that would be free from suspicion when any intervention is undertaken is always difficult, and the situation in Mexico in 1916 supports the position that no intervention of any kind should take place save under exceptional circumstances, and then as a last resort.

Civil strife.—The term, civil strife, is used in the Habana Convention of 1928: Rights and Duties of States in the Event of Civil Strife.

The first paragragh of article I of this convention obligates a contracting state to use the means at its disposal to prevent the promotion of civil strife in another state, party to the convention, by aid from within the jurisdiction of the first state. The second paragraph provides for internment of what are called rebel forces. The third paragraph forbids traffic in arms except with the established government, and the fourth paragraph binds a state to prevent fitting out of vessels "intended to operate in favor of the rebellion."

Article 2 refers to insurgent vessels and article 3 provides for treatment of the crews of insurgent vessels as political refugees.

This convention seems, therefore, to relate to what has come to be called insurgency, implying the existence of an organizd body of men pursuing public ends by force of arms, and temporarily beyond the control of the civil authority of the established state.

The United States at Montevideo Conference, 1933.—The Montevideo Conference of American States, 1933, considered the question of the rights and duties of states

which had been referred to it by the Habana Conference, 1928, a draft having been prepared by the Commission of Jurisconsults at Rio de Janeiro in 1927. It was stated that the questions were sufficiently developed to be susceptible of codification. Article 8 of the proposed Convention of the Rights and Duties of States said of intervention, "no state has the right to intervene in the internal or external affairs of another."

Secretary Hull, of the delegation of the United States, commenting on this convention on December 19, 1933, set forth the position of his Government, and, in signing the convention, reservation was made as follows:

"The Delegation of the United States of America, in signing the Convention on the Rights and Duties of States, does so with the express reservation presented to the Plenary Session of the Conference on December 22, 1933, which reservation reads as follows:

"The Delegation of the United States, in voting 'yes' on the final vote on this committee recommendation and proposal, makes the same reservation to the eleven articles of the project or proposal that the United States Delegation made to the first ten articles during the final vote in the full Commission, which reservation is in words as follows:

" 'The policy and attitude of the United States Government toward every important phase of international relationships in this hemisphere could scarcely be made more clear and definite than they have been made by both word and action especially since March 4. I have no disposition therefore to indulge in any repetition or rehersal of these acts and utterances and shall not do so. Every observing person must by this time thoroughly understand that under the Roosevelt Administration the United States Government is as much opposed as any other government to interference with the freedom, the sovereignty, or other internal affairs or processes of the governments of other nations.

" 'In addition to numerous acts and utterances in connection with the carrying out of these doctrines and policies, President Roosevelt, during recent weeks, gave out a public statement expressing his disposition to open negotiations with the Cuban Government for the purpose of dealing with the treaty which has existed since 1903. I feel safe in undertaking to say that under our support of the general principle of non-intervention as

has been suggested, no government need fear any intervention on the part of the United States under the Roosevelt Administration. I think it unfortunate that during the brief period of this Conference there is apparently not time within which to prepare interpretations and definitions of these fundamental terms that are embraced in the report. Such definitions and interpretations would enable every government to proceed in a uniform way without any difference of opinion or of interpretations. I hope that at the earliest possible date such very important work will be done. In the meantime in case of differences of interpretations and also until they (the proposed doctrines and principles) can be worked out and codified for the common use of every government, I desire to say that the United States Government in all of its international associations and relationships and conduct will follow scrupulously the doctrines and policies which it has pursued since March 4 which are embodied in the different addresses of President Roosevelt since that time and in the recent peace address of myself on the 15th day of December before this Conference and in the law of nations as generally recognized and accepted.'" (Report of the Delegates of the United States of America to the Seventh International Conference of American States, 1933, p. 20.)

This is a very comprehensive reservation and would involve interpretation of many "acts and utterances" which might not always be similarly understood.

Intervention, Montevideo, 1933.—A proposal for a definition of intervention was brought forward in the report of the second subcommittee on the rights and duties of states at the Montevideo, 1933, International Conference of American States. Concepts of nonintervention, not always identical, had been discussed at length and with warm eloquence at the fifth session of the subcommittee on December 19, 1933. Some of the speakers had made very vigorous opposition to the point of view expressed by certain states at Habana in 1928 that "Interposition is indispensable, in certain cases." This in 1933 was called "the nefarious principle of intervention." Some of the delegates called the Montevideo conference a "nonintervention conference."

Article 1–10, inclusive, of the convention on rights and duties of states were approved by the second com-

mittee without reservation other than "statements and declarations" made by the delegation of the United States.

Article 11 of the convention was also approved by the second committee though the United States abstained from voting and some other votes were conditional. This article 11, providing for nonrecognition of territorial acquisitions originating in violence, was held by some of the delegates to be merely a corollary of the principle of nonintervention.

There were questions as to the precise meaning of the word "intervention." One delegate maintained that "America knows perfectly well what intervention is, because it has lived it", and the Cuban delegate affirmed that "Cuba was born with the congenital vice of intervention" in the Platt amendment.

A definition of intervention was at length proposed as follows:

"Any act of a state through diplomatic representation, by armed force, or by any other means involving effective force, with a view to making the State's will dominate the will of another State, and, in general, any maneuver, interference or interposition of any sort, employing such means, either directly or indirectly in matter of the obligations of another State, whatever its motive, shall be considered as *Intervention*, and likewise a violation of International Law." (Seventh International Conference of American States, First, Second and Eighth Committees, Minutes and Antecedents, p. 165.)

Interpretation, 1936.—In an address of Under Secretary of State Phillips in Chicago, February 16, 1936, an interpretation of the clause relating to intervention in the convention on the rights and duties of states was given:

"I have heard it said that the State Department has put into a treaty with Latin American countries the assurance that the United States would never again use force for any purpose. It is true that a convention signed at Montevideo, entitled 'Convention on the Rights and Duties of States', contained the provision that 'no state has the right to intervene in the internal

or external affairs of another', and it is true also that our Government is opposed to the interference with the freedom, the sovereignty, or the internal affairs of the governments of other nations, just as we Americans are opposed to the intervention in the affairs of this country by any foreign power. But our Government, no more than any other responsible government, has never renounced the right to protect those legitimate rights of its citizens which are generally recognized and accepted by international law and by international conventions. The protection of the lives of citizens is and must be a matter of first concern to any responsible government, whenever and wherever the local authorities of the country in which they reside are clearly unable to afford such protection, and whenever the lives of its citizens are in real jeopardy.

"What we have renounced, however, is any right to claim that because we are more powerful than our neighbors we can use that superior force to intervene in the internal affairs of weaker nations, thereby acting in flagrant disregard of their sovereign rights. What we have renounced is a right to establish an American police force in other independent nations whenever the properties of the American citizens resident therein are believed to be endangered." (Department of State Publication, no. 844, The United States in World Affairs, p. 8.)

Navy attitude, 1891.—The laws in regard to conduct in time of insurrection particularly developed on the American continent because insurrections were more frequent in this area and many American states had originally based their right to exist upon successful revolution.

On March 4, 1891, the Secretary of the Navy sent to Admiral McCann general instructions which are in many respects now generally accepted by other states and in some definitely embodied in treaties.

"Insurgent vessels, although outlawed by Chilean Government, are not pirates unless committing acts of piracy. Observe strict neutrality. Take no part in troubles further than to protect American interests. Take whatever measures are necessary to prevent injury by insurgent vessels to lives or property of American citizens, including American telegraph cables. Endeavor to delay bombardment by insurgents until American citizens and property are removed, using force, if necessary, only as a last resort, and when serious injury is threatened.

American vessels seized by the insurgents without satisfactory compensation are liable to be recovered forcibly, but you should investigate matter fully before taking extreme measures, and use every precaution to avoid such measures if possible." (H. Ex. Doc. No. 91, 52d Cong., 1st sess., p. 245.)

The provision in regard to piracy is now generally approved. There is much uncertainty as to what constitutes neutrality and as to the nature of neutral rights even in time of duly declared war. There would be, even after the receipt of the general instructions from the Secretary of the Navy, points upon which question might be raised and more explicit provisions were issued to meet other situations.

"As a further and more explicit guide for your action you are directed:

"(1) To abstain from any proceedings which shall be in the nature of assistance to either party in the present disturbance, or from which sympathy with either party could be inferred.

"(2) In reference to the ships which have been declared outlawed by the Chilean Government, if such ships attempt to commit injuries or depredations upon the person or property of Americans, you are authorized and directed to interfere in whatever way may be deemed necessary to prevent such acts; but you are not to interfere except for the protection of the lives or property of American citizens.

"(3) Vessels or other property belonging to our citizens which may have been seized by the insurgents upon the high seas and for which no just settlement or compensation has been made are liable to forcible recovery; but the facts should be ascertained before proceeding to extreme measures and all effort should be made to avoid such measures.

"(4) Should bombardment of any place, by which the lives or property of Americans may be endangered, be attempted or threatened by such ships, you will, if and when your force is sufficient for the purpose, require them to refrain from bombarding the place until sufficient time has been allowed for placing American life and property in safety.

"You will enforce this demand if it is refused, and if it is granted, proceed to give effect to the measures necessary for the security of such life or property.

"(5) In reference to the granting of asylum, your ships will not, of course, be made a refuge for criminals. In the case of

persons other than criminals, they will afford shelter wherever it may be needed, to Americans first of all, and to others, including political refugees, as far as the claims of humanity may require and the service upon which you are engaged permit.

"The obligation to receive political refugees and to afford them an asylum is, in general, one of pure humanity. It should not be continued beyond the urgent necessities of the situation, and should in no case become the means whereby the plans of contending factions or their leaders are facilitated. You are not to invite or encourage such refugees to come on board your ship, but, should they apply to you, your action will be governed by considerations of humanity and the exigencies of the service upon which you are engaged. When, however, a political refugee has embarked, in the territory of a third power, on board an American ship as a passenger for purposes of innocent transit, and it appears upon the entry of such ship into the territorial waters that his life is in danger, it is your duty to extend to him an offer of asylum.

"(6) Referring to paragraph 18, page 137, of the Navy Regulations of 1876, which is as follows:

" 'If any vessel shall be taken acting as a vessel of war or a privateer without having proper commission so to act, the officers and crew shall be considered as pirates and treated accordingly.' "

"You are informed that this paragraph does not refer to vessels acting in the interests of insurgents and directing their hostilities solely against the State whose authority they have disputed. It is only when such vessels commit piratical acts that they are to be treated as pirates, and, unless their acts are of such a character or are directed against the persons or property of Americans you are not authorized to interfere with them.

"(7) In all cases where it becomes necessary to take forcible measures, force will only be used as a last resort, and then only to the extent which is necessary to effect the object in view. (Ibid.)

Restrictions upon the action of foreign vessels of war in ports where civil strife prevailed were later made particularly in regard to granting asylum on vessels of war which might be easily abused.

Protection of alien property.—At the time of an insurrection in Cuba in 1906, the American Chargé d'Af-

faires sent a telegram to the Secretary of State of which the following is a paraphrase:

"Mr. Sleeper asks to be advised if the following is satisfactory reply and advice to send to Americans requesting protection of property: 'In all cases of damage, destruction, or seizure of property against the will of the owner by agents of the Government or other parties, a complaint stating the facts and containing a list of the property so damaged, destroyed, or seized should be made to the court having jurisdiction, a copy of said complaint being forwarded at the same time to this legation. Wherever possible a statement in case property is damaged or destroyed and a receipt in case property is appropriated, subscribed to by the person or persons responsible for such damage or destruction or making such appropriation should be procured.'" (Foreign Relations, U. S., 1906, Part I, p. 457.)

This advice was approved by the Acting Secretary of State on August 29, 1906.

In a report to the Secretary of State, Chargé Sleeper said on September 8, 1906:

"Regarding the safeguarding of American interests, I have to say that, so far as I can ascertain, no effort has been made by the Government to afford the protection which I have from time to time requested through the foreign office. Fortunately, there has been no loss of life or destruction of property thus far, the rebels having confined themselves to the seizure of animals, arms, and equipment." (Ibid, p. 471.)

Owing to the then existing treaty relations between the United States and Cuba, the United States decided to intervene. Article 3 of the treaty of 1903 provided:

"The Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba." (33 U. S. Stat. 2248.)

This treaty was terminated May 29, 1934.

Arms traffic in civil strife.—While there are not, so far as the United States is concerned, many new features in the Habana Convention of 1928 on the Rights and

Duties of States in the Event of Civil Strife, it was the purpose of the conference to reach a general agreement. Traffic in arms with the established government was not restrained, but according to article 1,

"The contracting states bind themselves to observe the following rules with regard to civil strife in another one of them:

* * * * * * *

"3. To forbid the traffic in arms and war material, except when intended for the government, while the belligerency of the rebels has not been recognized, in which latter case the rules of neutrality shall be applied." (Report of the American Delegates, Sixth International Conference of American States, Habana, 1928. p. 228.)

British action, Nanking, 1927.—The so-called Nanking incident of March 24 and 25, 1927, in which lives were taken and property destroyed made action for protection essential. The Chinese requested an expression of regret from the British authorities, but were informed that protective measures were necessary.

"Dr. C. T. Wang to Sir M. Lampson.

"Nanking, August 9, 1928.

"Sir:

"Referring to the notes exchanged this day on the subject of the settlement of questions arising out of the Nanking incident of the 24th March, 1927, I have the honour to invite your Excellency's attention to the fact that on that date fire was opened upon Socony Hill, at Nanking, by the British war vessel 'Emerald,' then lying in the port. In view of this fact, the Nationalist Government earnestly hope that His Majesty's Government in Great Britain will express regret at this action.

"I avail, etc.

WANG CHENG TING"

"Sir M. Lampson to Dr. C. T. Wang.

Peking, August 9, 1928

"Sir.

I have the honour to acknowledge the receipt of your Excellency's note of to-day's date in which reference was made to the fact that on the 24th March, 1927, the British war vessel, H. M. S. 'Emerald,' then lying in the port, opened fire upon Socony Hill, at Nanking, and in which the hope was expressed

that His Majesty's Government in Great Britain would indicate their regret at this action.

"In reply, I have to point out that the firing referred to was, in fact, a protective barrage strictly confined to the immediate neighbourhood of foreign houses in which a number of British subjects had been driven to seek refuge from the assaults of an unrestrained soldiery; and not only did it provide the only conceivable means by which the lives of this party were saved from the danger that imminently threatened them, but it also made possible the evacuation of other British residents at Nanking, who were in actual peril of their lives. His Majesty's Government in Great Britain therefore feel that the measures taken by H. M. S. 'Emerald' were absolutely necessary for the protection of British lives and property, however deeply they may deplore the fact that the circumstances at Nanking on the 24th March, 1927, were such as to render necessary the adoption of these measures.

"I avail, etc.

(For His Majesty's Minister),
SIDNEY BARTON."

(Parliamentary Papers, China No. 1 (1928), Cmd. 3188, p. 4.)

Liability of insurgents.—Under the Habana Convention of 1928 on the Rights and Duties of States in the Event of Civil Strife it was provided in article 2 that—

"The declaration of piracy against vessels which have risen in arms, emanating from a government, is not binding upon the other states.

"The state that may be injured by depredations originating from insurgent vessels is entitled to adopt the following punitive measures against them: Should the authors of the damages be warships, it may capture and return them to the government of the state to which they belong, for their trial; should the damage originate with merchantmen, the injured state may capture and subject them to the appropriate penal laws.

"The insurgent vessel, whether a warship or a merchantman, which flies the flag of a foreign country to shield its actions, may also be captured and tried by the state of said flag." (Report of the American Delegates, Sixth International Conference of American States, Habana, 1928. p. 229.)

The first paragraph of article 2 in regard to declaration of piracy affirms a position which had long been

taken by many states, particularly on the American continent where many existing governments have been set up by armed revolution.

The second paragraph of article 2 supports a position which has been sometimes affirmed when the insurgent ship is taken at the time of committing the act of depredation. This paragraph does not specify any limit of time during which the vessel of the insurgent may be liable to capture, but prescribes what may be done to the vessel of war or merchant vessel with which the damage may originate.

The third paragraph of article 2 places the trial for this flying of a false flag by an insurgent "to shield its actions" in the state of the flag, but the false flag would not prevent capture by another state than that of the false flag which the vessel was flying if the vessel had committed depredations against that state. If, however, the only offense is flying of the false flag, the state whose flag is falsely flown would be entitled to capture and try the vessel.

The Perlas, 1909.—In a communication to the Honduranean Minister, November 9, 1909, Mr. Knox, Secretary of State, said,

> "The gasoline vessel *Perlas* is American built and was recently sent to Nicaragua, there to engage in ordinary and legitimate business. The vessel is the property of citizens of the United States.
>
> "It is reported to this department that she was recently pressed into service by the revolutionary forces at Bluefields and dispatched with a passenger for Puerto Barrios. On the way she was obliged to put into Puerto Cortes for fuel, where she has been detained by the authorities of the Honduranean Government.
>
> "The Government of the United States does not raise the question as to the right of Honduras to hold the passenger that this vessel was carrying at the time it put into Puerto Cortes, but insists that the detention of the vessel is without warrant or authority, and has demanded and will continue to demand its immediate release from the Honduranean authorities. The right to arrest the passenger does not carry with it the right to detain the vessel." (Foreign Relations, U. S., 1909, p. 377.)

On November 6, 1909, the paraphrase of a telegram to Minister Brown refers to the Colombian revolution of 1885,

"DEPARTMENT OF STATE,
"Washington, November 6, 1909.

"In re the detention by Honduras of the Perlas Co.'s launch, Mr. Knox instructs Mr. Brown to remind the minister for foreign affairs that the Government of the United States has upon occasion asserted and exercised the right to restore to the legitimate use of American owners vessels that had been impressed by revolutionists even going so far, in the Colombian revolution of 1885, as the retaking by a warship of such a vessel on the seas. Mr. Knox expresses the hope, however, that this aspect of the question will not be presented for discussion." (Ibid., p. 377.)

Flag similar to national flag.—Flying of false flag in time of peace or during an insurrection is regarded as a ground for protest. Even the flying of a flag which might be easily mistaken for the flag of a foreign state, has also been the ground for protest. There are, however, flags of several states which are not easily distinguishable at a distance, particularly when the distinction is mainly one of color.

In 1903 a Brazilian steamship line was flying a house flag similar to the flag of the United States, and the American minister brought the matter to the attention of the Brazilian Government.

AMERICAN LEGATION,
Petropolis, May 25, 1903.

"Mr. MINISTER: I herewith enclose you a sketch of the house flag used by the Brazilian firm of Rosa, Carvalho & Co., of Bahia and Pelotas, and regularly displayed in their ships which are engaged in the coastwise trade, and are registered at Pelotas.

"You will observe that this flag is substantially identical with the flag of my country, having 13 stripes alternately red and white, and a blue field in which stars are disposed in a circle in one of the forms authorized by our statutes and frequently used.

"The striking resemblance will appear by comparing the lithograph copy of our national ensign which I enclose with the sketch of the house flag of Rosa, Carvalho & Co.

"Our consular officers in Brazil have called my attention to the use of this ensign, and I believe you will agree with me that confusion may arise from the similarity of the two flags, and that Brazilian port officials as well as our consular officers might well mistake a Brazilian ship for an American or an American for a Brazilian.

"I do not know whether your Government has adopted any regulations in regard to the use of a national ensign as a house flag of a private firm, but I venture to call your attention for such action by the proper officials as may seem to you and them proper.

"D. E. THOMPSON."

(Foreign Relations, U. S., 1904, p. 102.)

The flag used by the steamship company had within the circle of 13 stars the monogram of the company, but this was not visible at any considerable distance.

The action of the American minister was reported on February 9, 1904, to have led to the "discontinuance of this abuse by order of the authorities."

A like occurrence in the following year led to another protest and a reply from the Brazilian Minister of Foreign Affairs as follows:

"MINISTRY OF FOREIGN AFFAIRS,
"*Rio de Janeiro, June 14, 1905.*

"Mr. AMBASSADOR: With reference to my note of the 2d of March ultimo, I have the honor to inform your excellency that the minister of marine has already instructed the captain of the port of Bahia to provide for the retiring of the flag flown by the schooner *Oliveira*, and on the same occasion he issued a circular to the captains of the ports of the Republic, prohibiting Brazilian shipping from using ensigns which resemble the flag of any country.

"I improve, etc.,

"RIO BRANCO."

(Foreign Relations, U. S., 1905, p. 99.)

Attitude of the United States, 1914.—Many differences of opinion have arisen in regard to the jurisdiction over private merchant vessels lawfully flying the flag of one state when in the port of another state. In 1914 the British Government informed the United States that as to criminal jurisdiction,

"The view adopted by His Majesty's Government has been that British jurisdiction in such cases is complete, but that has in several cases been disputed by the foreign Governments concerned." (Foreign Relations, U. S. 1914, p. 307.)

The British Government therefore proposed an investigation of the law and practice as to the exercise of criminal and civil jurisdiction over foreign merchant vessels in national ports and over national vessels in foreign ports. The Secretary of State of the United States made reply by citing many cases and quoting from diplomatic and other documents. In this long reply, it was said:

"With reference to the question of the jurisdiction over American merchant vessels in foreign territorial waters, it may be stated that the Government of the United States in the past has asserted in behalf of its vessels the rights which, as indicated by the judicial decisions to which attention has been called, are accorded to foreign vessels in waters of the United States. This Government, while conceding on the one hand that, when one of its vessels visits the port of another country for the purposes of trade, it is amenable to the jurisdiction of that country and is subject to the laws which govern the port it visits so long as it remains unless it is otherwise provided by treaty, has, on the other hand, on a number of occasions, made clear its views to the effect that, by comity, matters of discipline and all things done on board which affect only the vessels or those belonging to her and do not involve the peace or dignity of the country or the tranquillity of the port should be left by the local government to be dealt with by the authorities of the nation to which the vessel belongs, as the laws of that nation or the interests of its commerce may require." (Ibid, p. 312.)

Permitted coaling in time of peace.—Taking fuel by a vessel of war from a supply ship under its flag in foreign waters without previous arrangement may not be permitted. Sometimes advance arrangements of a general character are made.

Owing to differences which had arisen, a reciprocal arrangement was made between the United States and Mexico in 1907 when the United States wished to sta-

tion coaling vessels in Magdalena Bay. In regard to this, the Mexican Minister of Foreign Affairs sent the following communication to the American Chargé d'Affaires:

"DEPARTMENT OF FOREIGN AFFAIRS,
"*Mexico, November 16, 1907.*

"MR. CHARGÉ D'AFFAIRES: I have received your note, dated the 9th instant, in which you acknowledge the receipt of mine of the 4th, in which, acceding to the request of your Government, I advised you concerning that which Mexico considers reciprocity in regard to the permission for the stay of two coaling barges in Magdalena Bay, destined to supply the American squadron.

"You have kindly expressed your acceptance of the understanding of the Mexican Government about reciprocity, as also that the American Government is disposed to grant permission to Mexican men of war and other vessels to anchor or take coal in American ports, and you close your note by saying that with reference to coaling, the laws of the United States permit the same to all foreign vessels, this being the practice constantly observed by the United States.

"The above assertion from you compels me to make an explanation, which I consider in every sense necessary.

"In the same manner that the United States does, Mexico grants to all kinds of vessels in times of peace to anchor and take coal within Mexican waters, receiving them with the usual courtesy, permitting men of war to remain stationed in Mexican waters only during a short period of time, while the anchorage of the American coaling barges will be permanent during a period of three years, according to the communication relative to the matter addressed by the Executive to the Senate of Mexico, concerning which I had the honor to inform the embassy in my note of October 25 last.

"Therefore, I beg you to kindly advise me if the intention of your Government regarding reciprocity for the supply of Mexican war vessels is that they can remain stationed in American waters during the same period of three years, or only during the time ordinarily granted to all other foreign vessels.

"I consider your reply indispensable in order to act in accordance with the decision of the Senate, and I renew, etc.

"IGNO. MARISCAL."

(Foreign Relations, U. S., 1907, part 2, p. 845.)

The United States a month later expressed its willingness to make a reciprocal arrangement.

"AMERICAN EMBASSY,
"*Mexico, December 17, 1907.*

"Mr. SUBSECRETARY: Referring to the note of your department of November 16, on the subject of the privilege desired by my Government of stationing coaling barges in Magdalena Bay, all of which was telegraphed to Washington by Mr. Coolidge:

"I now have a telegram from Mr. Root in which he regrets deeply that action has not before been taken on this telegram, he having been under the impression that it had been acted upon until the receipt of my telegram of Saturday, the 14th instant.

"I am instructed to say to the Government of Mexico that it is the intention of the American Government regarding reciprocity for the supply of Mexican war vessels, that they can remain stationed in American waters during the same period for which that privilege is accorded to the vessels of the United States in pursuance of our request.

"In other words, the Government of the United States will grant to Mexico, in the event that such privileges are desired, the same that Mexico is asked to grant to the American Government in the way of privileges to American coaling vessels in Mexican waters.

"The delay in answering your department's note of November 16, reported to Washington by telegraph, seems to have been caused by referring the matter to the Navy Department, where an unexpected delay occurred.

"I avail, etc.,

"D. E. THOMPSON."

(Ibid., p. 846.)

Use of foreign flag.—The respect for the flag of a nation has become in recent wars a matter of special concern and often of legislation. Even the occasions on which a flag may be displayed and the purposes for which it may be used, have been prescribed. Restrictions may apply to the use of a national or of a foreign flag.

The use of flags in the time of war is of special importance, and the consequences of misuse may be serious. Denmark regulated the use of belligerent flags in 1915 even on land by a notification stating:

"it is forbidden in this country to hoist any other flag than the Dannebrog, as it is likewise forbidden to make use of the flag of a belligerent power either under the open sky or in inns, public houses, or other places where the public is admitted, whether the use thereof is for decoration or any other purposes." (1917 Naval War College, International Law Documents, p. 83.)

Norway assumed surveillance of vessels in Norwegian waters under a notification of October 1, 1915, prescribing:

"SECTION 1. Vessels in Norwegian waters shall hoist the national flag on arrival at a place of anchorage, where Norwegian war or guard ships lie, and also when such ships are in sight. While in Norwegian waters they shall stop immediately when it is ordered by Norwegian war or guard ships, e. g., when a warning signal is given by steam whistle, hoisting a signal, or a warning shot." (Ibid, p. 193.)

As it would be difficult to regulate movements of submarines, it was provided that in Norwegian waters submarines should navigate only on the surface and fly their national flag. Other states made similar regulations. Special regulations were made during the World War in regard to the use of false colors. During the World War, by joint resolution of Congress, approved June 30, 1917, American authorities were directed to take over a vessel in American jurisdiction or

" 'which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag or was under register of any such nation or any political subdivision or municipality thereof.' " (Ibid, p. 246.)

Liability under charter.—The charter party, as the contract for hiring, places the vessel according to the terms of the contract under the control of the charterer. It may be presumed that both parties to the contract know what is involved in its performance.

In the Code of Private International Law of the Sixth Conference of American States, Habana, 1928, in

title III referring to maritime and air commerce it was stated:

"ARTICLE 274. The nationality of ships is proved by the navigation license and the certificate of registration and has the flag as an apparent distinctive symbol.

"ARTICLE 275. The law of the flag governs the forms of publicity required for the transfer of property in a ship.

"ARTICLE 276. The power of judicial attachment and sale of a ship, whether or not it is loaded and cleared, should be subject to the law of the place where it is situated.

"ARTICLE 277. The right of the creditors after the sale of the ship, and their extinguishment, are regulated by the law of the flag.

"ARTICLE 278. Maritime hypothecation, privileges, and real guaranties, constituted in accordance with the law of the flag, have extraterritorial effect even in those countries the legislation of which does not recognize nor regulate such hypothecation.

"ARTICLE 279. The powers and obligations of the master and the liability of the proporietors and ship's husbands for their acts are also subject to the law of the flag.

"ARTICLE 280. The recognition of the ship, the request for a pilot, and the sanitary police depend upon the territorial law.

"ARTICLE 281. The obligations of the officers and seamen and the internal order of the vessel are subject to the law of the flag.

"ARTICLE 282. The preceding provisions of this chapter are also applicable to aircraft.

"ARTICLE 283. The rules on nationality of the proprietors of ships and aircraft and ship's husbands, as well as of officers and crew, are of an international public order." (Report of the Delegates of the United States to the Sixth International Conference of American States, Habana, 1928, p. 139.)

The Argentine delegation made certain reservations in regard to this proposed code:

"12. It makes specific reservation of the application of the 'law of the flag' to questions relating to maritime law, especially as regards the charter party and its legal effect, as it considers that these should be subject to the law and jurisdiction of the country of the port of destination." (Ibid., p. 167.)

Paraguay also made reservation as to the "law of the flag."

The delegates of the United States abstained from voting for the code, though they expressed the thought

that later the Government "may be enabled to adhere to at least a large portion thereof."

Navy regulations.—The conduct of a naval force of one state when in the territorial waters or port of a foreign state has often led to misunderstandings. To avoid controversies states have issued regulations to their naval officers providing in some respects in detail the line of action to be followed. In general, the naval officer is not to assume any functions of the diplomatic or consular officers except in the absence of such officers from a foreign port and even then to use greatest care in showing respect to the local authorities.

The United States Navy Regulations provide in article 720:

> "In the absence of a diplomatic or consular officer of the United States at a foreign port the commander in chief, as senior officer present, has authority—
>
> "(a) To exercise the powers of a consul in relation to mariners of the United States (Sec. 1433, R. S.);
>
> "(b) To communicate or remonstrate with foreign civil authorities as may be necessary;
>
> "(c) To urge upon citizens of the United States the necessity of abstaining from participation in political controversies or violations of the laws of neutrality."

In article 723 is the general statement, "The use of force against a foreign and friendly state or against anyone within the territories thereof is illegal."

Of course, the right of self-preservation is always assumed, though the exercise of this right is strictly circumscribed.

Insurrection in state O.—In this situation there is a disturbed condition of affairs in state O, followed by an organized armed attempt to attain a political objective, a condition of insurgency.

The 1928 Habana Convention on Rights and Duties of States in the Event of Civil Strife aimed to clarify the rules of action under such conditions as are set forth in situation II. Article 1 of the convention provides for

the application of certain restraints within its own jurisdiction by a party to the treaty when there is civil strife in another state party to the convention. Article 2 treats particularly of measures that may be taken by the established state in which the insurrection exists. Article 3 defines the treatment to be given an insurgent vessel in a foreign port. By the terms of article 4 this convention does not affect obligations previously undertaken through international agreements.

In accord with this Convention on the Rights and Duties of States in Event of Civil Strife, no authority is conferred upon a foreign state to interfere with acts taking place within the jurisdiction of the state in which the civil strife has arisen. Such acts are within the jurisdiction of the disturbed state and, though the local authorities may ask of a foreign vessel of war aid against insurgents, the vessel of war may not extend such aid except on instruction from his government.

A vessel of war of the United States would, under article 2 of this convention, be under obligation to prevent within jurisdiction of the United States the unlawful use of waters, by nationals or aliens for "gathering elements" "for the purpose of starting or promoting civil strife." An insurgent vessel of war, taking coal within the maritime jurisdiction of the United States, would be violating this article and should be apprehended though pursuit cannot lawfully continue into a foreign jurisdiction and pursuit for this offense, once abandoned, may not be resumed.

The transfer of a vessel of war can only take place through an act of the state to which the vessel belongs except in time of lawful war. Salutes would be made only to flags of vessels of duly recognized states. An insurgent vessel raising a false flag is not entitled to a salute but may be captured and turned over to the state of that flag.

As an insurgent has no recognized prize court its vessels may not lawfully seize foreign merchant vessels though insurgents may deny or even use force to prevent access to the ports of the established state.

Under article 2 of the 1928 Habana Convention an injured foreign state is entitled to capture vessels of war of insurgents when such vessels have committed depredations and these vessels may be returned to the state to which they belong for trial. Some of the facts may be difficult to determine and accordingly official instructions from the proper authorities may be requested.

SOLUTION

(*a*) 1. The commander of the *Able* should decline the request of the local authorities, though he should warn the master of the *Ali* of the risk he runs.

2. The commander of the *Able* should decline the request of the local authorities, though he should warn the master of the *Ato* of the risk he runs.

(*b*) 1. The commander of the *Armo* should pursue the vessel of war.

2. The pursuit must not continue within the jurisdiction of state O and, when the pursuit is thus discontinued, cannot be resumed the following morning.

(*c*) 1. The commander of the *Able* should not return the salute of the *Ora* which is under a false flag.

2. The commander of the *Armo* should seize and hold the *Ora* pending instructions.

Situation III

AIRCRAFT—HOSPITAL SHIPS

States X and Y are at war. Other states are neutral.

(*a*) State X proclaims and maintains with vessels of war the surface blockade of the port of Mola on the coast of Y near the boundary of state B. Blockade proclamation states that the blockade includes aircraft. Aircraft and submarines of Y and of neutral flags pass the blockade line with ease.

(1) A private seaplane of state B becomes disabled and alights inside the blockade lines. A cruiser of X seizes the seaplane on the ground that it has violated the blockade.

(2) Would the treatment of the seaplane be the same if it had alighted 50 miles outside the blockading lines and had been met by a vessel of war of X which had no connection with the blockading forces.

(*b*) A military aircraft of state Y becomes disabled off the coast of state B and lands at an airport of B. State B immediately interns the aircraft and crew.

(*c*) At a port of R, remote from X and Y, an armed private aircraft of X calls to obtain fuel to take the aircraft directly to its port of departure in state X.

(*d*) An aircraft of X dropped a tear gas bomb upon a vessel of war of Y. Y declares that this act is contrary to the laws of war and that it will in retaliation use bacteriological bombs against X.

(*e*) A military hospital ship of X, the *Safety* flying the Red Cross flag passing within sight of but not near a fleet of Y, reports what it has seen to the commander of the fleet of X.

(1) Neutral state C learning of this action declines to allow the *Safety* any rights in its ports other than those granted to vessels of war.

(2) The fleet of Y fires upon and captures the *Safety* and takes it in to a port of Y.

What action would existing law sustain in each of the above cases?

SOLUTION

(*a*) 1. The private neutral seaplane alighting within the blockade lines should be seized. The proof of innocence rests upon the seaplane.

2. The private neutral seaplane alighting 50 miles outside the blockade lines is not liable to seizure unless on grounds discovered by visit and search.

(*b*) The military aircraft and crew should be interned by state B.

(*c*) The armed private aircraft of state X should not be supplied with fuel in a port of R.

(*d*) The use of tear gas by one belligerent against another is not prohibited, therefore the resort to the use of bacteriological bombs in retaliation is unlawful.

(*e*) 1. Neutral state C, while not under obligation to pass upon the character of an act of a hospital ship of a belligerent, may treat such a ship as a vessel of war if convinced that the ship has forfeited its immunities.

2. The capture of the *Safety* by the fleet of Y is lawful, but care should be taken to restrict the use of force to the minimum.

NOTES

Surface blockade.—While it must be admitted that blockade involving absolute prevention of access to the coast of the enemy has rarely, if ever, been possible, blockade involving danger to the party attempting to pass has been the rule except in paper blockades.

As was said in 1899 in the case of the *Olinde Rodrigues:*

"To be binding, the blockade must be known, and the blockading force must be present; but is there any rule determining that the presence of a particular force is essential in order to render a blockade effective? We do not think so, but, on the contrary, that the test is whether the blockade is practically effective, and that that is a question, though a mixed one, more of fact than of law.

"The fourth maxim of the Declaration of Paris (April 16, 1856), was: 'Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.' Manifestly this broad definition was not intended to be literally applied. The object was to correct the abuse, in the early part of the century, of paper blockades, where extensive coasts were put under blockade by proclamation, without the presence of any force, or an inadequate force, and the question of what might be sufficient force was necessarily left to be determined according to the particular circumstances." (174 U. S. 510.)

Later in the same case it was said:

"it cannot be that a vessel actually captured in attempting to enter a blockaded port, after warning entered on her log by a cruiser off that port only a few days before, could dispute the efficiency of the force to which she was subjected.

"As we hold that an effective blockade is a blockade so effective as to make it dangerous in fact for vessels to attempt to enter the blockaded port, it follows that the question of effectiveness is not controlled by the number of the blockading force. In other words, the position cannot be maintained that one modern cruiser though sufficient in fact is not sufficient as matter of law." (Ibid.)

That the nature of blockade was changing was admitted in 1899 and there have been further changes in the physical requirements since that time. Referring further to the blockaded port of San Juan, Porto Rico, where the *Olinde Rodrigues* was seized it was said,

"On July 14 and thereafter the port was blockaded by the armored cruiser New Orleans, whose maximum speed was twenty-two knots, and her armament six 6-inch breech-loading rifles, four 4.7-inch breech-loading rifles, ten 6-pounders, four 1.5-inch guns, corresponding to 3-pounders; four 3-pounders in the tops; four 37-millimetre automatic guns, corresponding to 1-

pounders. The range of her guns was five and one half sea miles or six and a quarter statute miles. If stationary, she could command a circle of thirteen miles in diameter; if moving, at maximum speed, she could cover in five minutes any point on a circle of seventeen miles diameter; and in ten minutes any point on a circle of nineteen miles diameter; her electric search lights could sweep the sea by night for ten miles distance; her motive power made her independent of winds and currents; in these respects and in her armament and increased range of guns she so far surpassed in effectiveness the old-time war ships that it would be inadmissible to hold that even if a century ago more than one ship was believed to be required for an effective blockade, therefore this cruiser was not sufficient to blockade this port." (Ibid.)

It would be difficult for a vessel which has been captured by a blockading force to maintain that the blockade was not effective.

It is further entirely conceivable that a blockade for the purpose of preventing access of bulky articles might be maintained as effective when small articles might be taken in to the port by aircraft or submarines.

Restrictions on use of aircraft, 1899, 1907.—The use of aircraft had sufficiently developed at the end of the nineteenth century to bring it before the First Hague Peace Conference of 1899 and, at this conference, the discharge of projectiles from balloons and analogous methods of warfare was prohibited for 5 years. While this period of prohibition expired during the Russo-Japanese War, both parties respected the prohibition to the end of the war.

Progress in matters of aerial navigation was so rapid that at the Second Hague Peace Conference in 1907 the states having large military forces were unwilling to renew the prohibition of 1899. There were, however, many conferences upon varying aspects of aerial navigation, and military plans recognized that the use of the air for war purposes should be anticipated.

The experience of the World War gave rise to many questions in regard to the rights of aircraft as affecting both neutrals and belligerents at sea and on land.

The matter was brought before the legal advisers at the Washington Naval Conference, 1921–22, but was referred to the Commission of Jurists appointed under a resolution of the conference.

This Commission met at The Hague and concluded its report on February 19, 1923, particularly treating of the control of radio and aircraft in time of war. The rules of this report have never been formally adopted, but are weighty evidence of what may be considered reasonable conduct under conditions covered by the rules.

Air and marine blockade.—That blockade by surface vessels may for certain purposes need the aid of aircraft to render it effective under modern conditions is evident. If, as is probable, wars of the future are to use aircraft, then the effectiveness of blockade will be measured by consideration of the factors entering into the blockade in which air as well as surface vessels are involved.

Upon this type of blockade Mr. J. M. Spaight in his discussion of the effectiveness of a blockade in the air, "assuming that neutral contiguous states would allow passage through their jurisdiction to the blockade-running aircraft," says:

"If a blockade is to be recognized as extended from the sea to the air above, it must be effective in the air as well as on the sea, but a different degree of effectiveness will probably be demanded in the air, because of the greater difficulty of controlling passage in that element. Take, for instance, the blockade of a short extent of enemy coast surrounded on each side by a neutral coast. Access to such a coast by marine craft can easily be prevented, the line to be watched being, *ex hypothesi*, short; but, for that same reason, access by aircraft would be extremely difficult to prevent, for, instead of attempting direct entry or exit, the blockade-running aircraft would always approach or leave the blockaded area through neutral jurisdiction, into which the belligerent military aircraft acting with the blockading warships could not follow them. Even where a long line of enemy coast is being blockaded, aircraft would still have an advantage in attempting entry or egress; they

would not be tied to the ports, as marine craft are, but could pass in or out anywhere, provided always that their radius of action was sufficient to enable them to reach a safe landing-ground.

"The fact that aircraft could thus find a 'way round' would not make the blockade ineffective, within the formula of the Declaration of Paris, nor entitle neutral States to claim that it should not be recognized as a legally existent blockade, the breach of which involved the condemnation of such aircraft as could in fact be captured. The fact that ships can pass (even in fairly considerable numbers, as did the blockade-runners in the American War of Secession) through the blockading cruisers is no ground for holding the blockade to be ineffective, provided that there is on the whole a real danger of capture for any individual vessel making the attempt. This principle will, no doubt, be recognized in a still greater degree in regard to aircraft, and it will be accepted as inevitable that the proportion of captures to successful evasions which would entitle neutrals to challenge the effectiveness of the blockade must be lower in their case than in that of ships." (Spaight, Air Power and War Rights, 2d edition, p. 397.)

(*a*) *Blockade; surface, submarine, and aircraft.*— The Declaration of Paris, 1856, provides that "Blockades in order to be binding must be effective." This provision was drawn for the purpose of putting an end to so-called "paper blockades." This declaration made in 1856 referred to blockades in which surface ships were the customary means of rendering the closing of the ports effective. The same principle would be generally applicable whether the proclamation was in regard to a blockade on, over, or under the sea; to be binding the blockade should be effective.

In 1899, Mr. Chief Justice Fuller, in the case of the *Olinde Rodrigues*, said, "To be binding, the blockade must be known, and the blockading force must be present; but is there any rule of law determining that the presence of a particular force is essential in order to render the blockade effective? We do not think so, but on the contrary, that the test is whether the blockade is practically effective, and that that is a question,

though a mixed one, more of fact than of law." (174 U. S. 510.) In general it has been considered that an effective blockade is one that renders access or egress from the blockaded port dangerous, and that, in a case where the craft that has attempted to pass the blockade and has been captured cannot establish that, it is not effective. The captured craft may, however, plead on other grounds that it has not violated the blockade. The burden of such proof rests upon the captured craft.

A blockade maintained by surface vessels only without means of preventing or rendering dangerous the passage of aircraft or submarine would be a "paper blockade" insofar as such craft were concerned even though proclaimed to include these.

Any seaplane met at sea by a vessel of war may be visited and searched to determine its relation to the hostilities and it may be treated according to the evidence found. In recent years on account of improved means of communication it would be difficult to prove ignorance.

Aircraft in distress.—The rules for entry of surface vessels in distress would not apply to aircraft. In the period before the World War it was thought by some that aircraft might enter and sojourn in neutral jurisdiction under the same conditions as those prescribed for surface vessels. The practice of states while neutral in the World War from the Netherlands to China was to use the force at their disposal to intern belligerent aircraft entering their jurisdiction. Dutch gunners shot down aircraft flying over Dutch territory. Other states did the same. Disabled aircraft entering neutral jurisdiction were usually detained and interned until the end of the war. *Force majeure* or distress were regarded as too indefinite to differentiate from intentional entrance in case of aircraft and the accounts of aviators of the World War seem to justify the neutral practice of prohi-

81178—36——7

bition of entrance and internment in case of violation of the prohibition. Articles 39, 40, and 42 of the Hague Rules of 1923 show the attitude of the Commission of Jurists.

"Article 39. Belligerent aircraft are bound to respect the rights of neutral powers and to abstain within the jurisdiction of a neutral State from the commission of any act which it is the duty of that State to prevent.

"Article 40. Belligerent military aircraft are forbidden to enter the jurisdiction of a neutral State." * * *

"Article 42. A neutral Government must use the means at its disposal to prevent the entry within its jurisdiction of belligerent military aircraft and to compel them to alight if they have entered such jurisdiction.

"A neutral Government shall use the means at its disposal to intern any belligerent military aircraft which is within its jurisdiction after having alighted for any reason whatsoever, together with its crew and the passengers, if any." (1924 Naval War College, International Law Documents, p. 131.)

Internment of British seaplanes.—In a memorandum of the British Foreign Office of May 31, 1916, the Netherlands Government was requested to permit a seaplane which had been rescued and taken in by a Dutch lugger to be dispatched to Great Britain. Certain principles were set forth in this memorandum:

"A Seaplane belonging to His Majesty's forces was recently obliged on account of engine trouble to descend while over the North Sea. The pilot was rescued by a Dutch fishing boat, which took both him and the seaplane into a Dutch port. The Netherlands Government, though they have released the pilot, appear to consider it their duty to retain the seaplane for the duration of the war. After a careful consideration of the question, His Majesty's Government feel bound to dissent from this view, and believe that the Netherlands Government are under no obligation to intern the machine.

"The Netherlands Government, in releasing the pilot, appear to have considered that he was in the same position as a member of the crew of a ship-wrecked belligerent warship who is picked up by a neutral merchant vessel and conveyed to a neutral port; such a person, under the rules of The Hague Convention No. 10, of 1907, is entitled to be released. His Majesty's Gov-

ernment believe their decision on this point to be correct and consider that, while none of the rules expressly laid down by international law exactly fit the case of the seaplane, a further examination of the principles which lie behind the rules which compel neutrals to intern belligerent forces in certain circumstances shows that the seaplane should also be released.

"The rules concerning internment are not based on any one single and uniform principle. This fact explains itself when one takes into consideration that these rules have grown up gradually and severally and were, before the Peace Conference at The Hague in 1907, customarily agreed upon from different motives. The consequence is that the rules governing internment differ not only with regard to the internment of soldiers on neutral land and internment of warships in neutral harbours, but also with regard to the internment of troops in general, and the internment of such soldiers as have escaped from captivity.

"One of the basic reasons for the rules concerning internment is no doubt the fact that a belligerent is entitled to insist that such enemy forces as have crossed neutral territory for the purpose of escaping capture, shall not be enabled to leave the neutral territory and again resort to hostilities. But this concerns only enemy forces which have deliberately entered neutral territory for the purpose of escaping capture: it cannot apply to such enemy forces as for other purposes cross into neutral territory, or even cross accidentally without knowledge of the neutral frontier. Now, all these must likewise be interned, and the basic reason for their internment is that, in case these troops are not interned, the other belligerent would be justified in crossing into the neutral territory on his part and attacking the enemy there.

"As regards the internment of men-of-war, the basic reasons are also manifold. One is—just as in the case of fugitive troops—that a belligerent is entitled to insist that enemy men-of-war which deliberately enter neutral harbours for the purpose of escaping capture, shall not after some length of time be allowed to leave and resort to hostilities again, although they may leave if they only stay twenty-four hours. Other reasons are that a neutral must not allow belligerent men-of-war to make his harbours the base of military operations, the base of supply beyond a certain limit, the base for repairing vital damages, and the like." (Parliamentary Papers, Miscellaneous, No. 4 [1918] Cd. 8985, p. 3; see also 1931 Naval War College, International Law Situations, pp. 14–22.)

The Netherlands explained that under strict rules of neutrality, the Queen's Government, to their regret, were unable to comply with the request of the British Government until the end of the war.

Later in the case of the British seaplane *No. 1232*, which came down in the North Sea, September 23, 1917, sixty miles off the Dutch coast and was rescued and towed by a Dutch fishing vessel to the Helder, the British claimed that the seaplane should be released as well as the personnel. The Dutch Government released the personnel, but declined to release the aircraft till the end of the war.

Naval War College discussion, 1926.—In referring to internment during the World War, it was said in the solution of situation III, 1926, that:

"During the World War for the first time the question of aircraft in relation to neutral jurisdiction became one of great practical importance. While practice was not, at first, in every instance uniform, gradually it came to be recognized that belligerent aircraft had no right to enter neutral jurisdiction. Some of the neutral states for a time questioned the necessity of denying entry to aircraft, and considered permitting entry on terms analogous to those applied to maritime vessels of war. Switzerland and the Netherlands, from their geographical position as neutral islands surrounded by belligerents, had to face the problem in more varied manifestations. Both states maintained the right to use necessary force to prevent entrance of belligerent aircraft or even to intern aircraft entering under *force majeure*. Disabled belligerent aircraft, aircraft trying to escape from the enemy, aircraft lost in fog or storm, were with their personnel forced to land and interned by neutral states. Early in the war there was some uncertainty in regard to hydroplanes in Norway, and later Denmark permitted some German deserters to remain after entering Danish jurisdiction in a stolen aircraft. The Netherlands interned American aircraft alighting within Dutch jurisdiction after a battle over the high sea with Germany. The Swiss authorities similarly interned American fliers when returning from an observation flight and forced by motor trouble to land within Swiss jurisdiction. There were many cases in which the crews were interned when the aircraft were destroyed either intentionally or by accident. When aircraft personnel was

rescued on the high seas and brought within neutral jurisdiction, the practice was usually to release them." (1926 Naval War College, International Law Situations, p. 100.)

(*b*) *Aircraft.*—The treatment of military aircraft alighting within neutral jurisdiction "for any reason whatsoever" was discussed at The Hague in the Commission of Jurists in 1923 and in meetings of other bodies since that time. The concensus of opinion has been that the duty of internment of military aircraft is even more imperative than that to intern troops entering neutral jurisdiction.

Article 53, Hague Rules, 1923.—The report of the Commission of Jurists, February 19, 1923, contained as article 53 regulations under which neutral private aircraft were liable to capture. While these rules have not been internationally adopted, they embody many accepted principles of international law.

Article 53 provides that:

"A neutral private aircraft is liable to capture if it * * *.

"(a) Resists the legitimate exercise of belligerent rights.

"(b) Violates a prohibition of which it has had notice issued by a belligerent commanding officer under article 30.

"(c) Is engaged in unneutral service.

"(d) Is armed in time of war when outside the jurisdiction of its own country.

"(e) Has no external marks or uses false marks.

"(f) Has no papers or insufficient or irregular papers.

"(g) Is manifestly out of the line between the point of departure and the point of destination indicated in its papers and after such enquiries as the belligerent may deem necessary, no good cause is shown for the deviation. The aircraft, together with its crew and passengers, if any, may be detained by the belligerent, pending such enquiries.

"(h) Carries, or itself constitutes, contraband of war.

"(i) Is engaged in breach of a blockade duly established and effectively maintained.

"(k) Has been transferred from belligerent to neutral nationality at a date and in circumstances indicating an intention of evading the consequences to which an enemy aircraft, as such, is exposed.

"Provided that in each case (except (k)) the ground for capture shall be an act carried out in the flight in which the neutral aircraft came into belligerent hands, i. e., since it left its point of departure and before it reached its point of destination." (1924 Naval War College, International Law Documents, p. 146.)

Paragraph (i) of these rules was quite fully discussed by the Commission, and their report shows the trend of the discussion.

"(i) The ninth ground for capture is that the aircraft is engaged in a breach of blockade. 'Blockade' is here used in the same sense in which it is employed in Chapter 1 of the Declaration of London, that is to say, an operation of war for the purpose of preventing by the use of warships ingress or egress of commerce to or from a defined portion of the enemy's coast. It has no reference to a blockade enforced without the use of warships, nor does it cover military investments of particular localities on land. These operations, which may be termed 'aerial blockade,' were the subject of special examination by the experts attached to the various Delegations, who framed a special report on the subject for consideration by the Full Commission. The conditions contemplated in this sub-head are those of warships enforcing a blockade at sea with aircraft acting in co-operation with them. As the primary elements of the blockade will, therefore, be maritime, the recognized principles applicable to such blockade, as for instance, that it must be effective (Declaration of Paris, article 4), and that it must be duly notified and its precise limits fixed, will also apply. This is intended to be shown by the use of the words 'breach of blockade duly established and effectively maintained' in the text of the sub-head.

"It is too early yet to indicate with precision the extent to which the co-operation of aircraft in the maintenance of blockade at sea may be possible; experience alone can show. Nevertheless, it is necessary to indicate the sense in which the Commission has used the word 'effective.' As pointed out in the Declaration of London, the effectiveness of a blockade is a question of fact. The word 'effective' is intended to ensure that it must be maintained by a force sufficient really to prevent access to the enemy coast-line. The prize court may, for instance, have to consider what proportion of surface vessels can escape the watchfulness of the blockading squadrons without endangering the effectiveness of the blockade; this is a question which the

prize court alone can determine. In the same way, this question may have to be considered where aircraft are co-operating in the maintenance of a blockade.

"The invention of the aircraft cannot impose upon a belligerent who desires to institute a blockade the obligation to employ aircraft in cooperation with his naval forces. If he does not do so, the effectiveness of the blockade would not be affected by failure to stop aircraft passing through. It is only where the belligerent endeavors to render his blockade effective in the air-space above the sea as well as on the surface itself that captures of aircraft will be made and that any question of the effectiveness of the blockade in the air could arise.

"The facility with which an aircraft, desirous of entering the blockaded area, could evade the blockade by passing outside the geographical limits of the blockade has not escaped the attention of the Commission. This practical question may affect the extent to which belligerents will resort to blockade in future, but it does not affect the fact that where a blockade has been established and an aircraft attempts to pass through into the blockaded area within the limits of the blockade, it should be liable to capture.

"The Netherlands Delegation proposed to suppress (i) on the grounds that air blockade could not be effectively maintained, basing its opinion on its interpretation of the experts' report on the subject.

"The British, French, Italian and Japanese Delegations voted for its maintenance. The American Delegation voted for its maintenance *ad referendum*." (Ibid., p. 144.)

Armed private aircraft.—The Hague Commission of 1923 also gave consideration to the arming of private aircraft and expressed the opinion that the interests of all would be better served if the arming of private aircraft should be prohibited. Since 1923 this opinion has been repeatedly confirmed because giving rise to many possible misunderstandings and there has been introduced the general understanding that public aircraft only may be armed.

(*c*) *Military aircraft in neutral jurisdiction.*—While there is still doubt in regard to the obligations of a neutral state in respect to private aircraft of a belligerent nationality, the rules of the Hague Commis-

sion of Jurists of 1923 are generally considered as binding as to public and military aircraft. These rules of the Hague Commission were based on a draft submitted by the American delegation.

The report of the Commission in commenting on this article says,

"The provision in the article is limited to military aircraft because it is only in respect of such craft that the prohibition on entry is absolute. Under article 12 the admission of private or public non-military aircraft is within the discretion of the neutral State. Where such aircraft penetrate within neutral jurisdiction in violation of the measures prescribed by the neutral Power, they will be subject to such penalties as the neutral Power may enact; these may or may not include internment. Recognition of this fact has enabled the Commission to omit a provision which figured as article 11 in the American draft:

'A neutral Government may intern any aircraft of belligerent nationality not conforming to its regulations.'

"The obligation on the part of the neutral Power to intern covers not only the aircraft, but its equipment and contents. The obligation is not affected by the circumstance which led to the military aircraft coming within the jurisdiction. It applies whether the belligerent aircraft entered neutral jurisdiction, voluntarily or involuntarily, and whatever the cause. It is an obligation owed to the opposing belligerent and is based upon the fact that the aircraft has come into an area where it is not subject to attack by its opponent.

"The only exceptions to the obligation to intern an aircraft are those arising under articles 17 and 41. The first relates to flying ambulances. Under the second, an aircraft on board a warship is deemed to be part of her, and therefore will follow the fate of that warship if she enters neutral ports or waters. If she enters under circumstances which render her immune from internment, such aircraft will likewise escape internment.

"The obligation to intern belligerent military aircraft entering neutral jurisdiction entails also the obligation to intern the personnel. These will in general be combatant members of the belligerent fighting forces, but experience has already shown that in time of war military aeroplanes are employed for transporting passengers. As it may safely be assumed that in time of war a passenger would not be carried on a belligerent military aircraft unless his journey was a matter of importance to

the Government, it seems reasonable also to comprise such passengers in the category of persons to be interned." (Ibid, p. 133.)

Retaliation.—Particularly during and since the World War the idea of retaliation has received renewed attention. Retaliation was before 1914 regarded as in the realm of acts not in accord with international law which might be resorted to against an opponent who in war disregarded the law of war. Retaliatory measures were to be strictly limited to remedying the breach of the law by the enemy and to be directed toward the enemy though a neutral might be inconvenienced or even incidentally injured, but the act of retaliation should not be aimed at the neutral or directly restrict the rights of a neutral. It was admitted that the law of contraband, blockade, and unneutral service did limit the peacetime rights of a neutral state, but these restrictions were generally accepted.

Retaliation has usually been threatened or resorted to when new methods or means of war have come into use. Threats were made in the Franco-Prussian War, 1870, that balloons would be treated as spies, and in the Russo-Japanese War, 1904–5, that newspaper correspondents using radio would be treated as spies. During the World War there were many propositions to the effect that aviators, if captured, should be hanged or immediately shot, or in any case, should be treated as criminals. Similar propositions were advanced in regard to the personnel of submarines regardless of their conduct.

In the time of war there is always a ready response to rumors of unlawful conduct on the part of an opponent. Propaganda and war hysteria serve to make demands for retaliation or for reprisals popular and to make pictures of enemy disregard of law readily accepted.

While there have been attempts to regulate in some degree reprisals on land by international conventions,

such conventions have not been formally extended to maritime and aerial warfare. It would, however, be safe to assume that in principle the same law would apply over, on, and in the sea.

The late Prof. A. Pearce Higgins, who aided in preparing some of the arguments for the British Government in prize cases, after the cases of the *Zamora*, *Leonara*, and *Stigstad*, proposed the following bases for consideration:

"1. Retaliation is a right of the belligerent which must be exercised only after the greatest provocation, and as a last resort.

"2. Retaliatory measures must primarily be directed only against the enemy and need not be of an identical character with the wrong complained of.

"3. In the exercise of retaliation the fundamental laws of humanity must be observed.

"4. In all cases of retaliation which involve inconvenience or detriment to neutrals, Prize Courts of the belligerents should have jurisdiction both to enquire into the facts alleged as giving rise to the retaliatory measures, and also to decide whether the means adopted inflict on neutrals a degree of inconvenience in excess of that necessary to terminate the alleged illegalities.

"5. Neutrals should be allowed compensation in all cases where there is undue delay in dealing with their cases in the belligerent Prize Courts under retaliatory orders, or where ship or cargo is released in consequence of an erroneous application of the order.

"6. Retaliatory orders, since they are in derogation of the general rules of law, must, in case of ambiguity of language, be construed against the states issuing them." (Pearce Higgins, International Law and Relations, p. 237.)

Protocol on gases, 1925.—At the Washington Conference on the Limitation of Armament, 1921–22, the proposal to limit the use of gas was coupled with regulations in the use of submarines. The Advisory Board of the American delegation submitted a report from its subcommittee on new agencies of warfare which contained the following:

"Resolved, That chemical warfare, including the use of gases, whether toxic or nontoxic, should be prohibited by international

agreement, and should be classed with such unfair methods of warfare as poisoning wells, introducing germs of disease, and other methods that are abhorrent in modern warfare." (Conference on the Limitation of Armament, Washington, November 12, 1921–February 6, 1922, p. 732.)

The French version of this resolution was as follows:

"Il est décidé: Que la guerre chimique, comprenant l'usage des gaz, toxiques ou non toxiques, devrait être interdite par un accord international, et classée parmi les méthodes de guerre déloyales, telles que l'empoisonnement des puits, la propagation de germes de maladies et autres méthodes exécrables de la guerre moderne." (Ibid, p. 733.)

It will be observed that the form in both languages is "toxic or nontoxic." The chairman of the conference, Mr. Secretary Hughes, also called attention to a report of the General Board of the United States Navy in which, referring to the question "Should gas warfare be prohibited," it was stated:

"4. The two principles in warfare, (1) that unnecessary suffering in the destruction of combatants should be avoided, (2) that innocent noncombatants should not be destroyed, have been accepted by the civilized world for more than one hundred years. The use of gases in warfare in so far as they violate these two principles is almost universally condemned to-day, despite its practice for a certain period during the world war.

"5. Certain gases, for example, tear gas, could be used without violating the two principles above cited. Other gases will, no doubt, be invented which could be so employed; but there will be great difficulty in a clear and definite demarcation between the lethal gases and those which produce unnecessary suffering as distinguished from those gases which simply disable temporarily. Among the gases existing to-day there is undoubtedly a difference of opinion as to the class to which certain gases belong. Moreover, the diffusion of all these gases is practically beyond control and many innocent non-combatants would share in the suffering of the war, even if the result did not produce death or a permanent disability.

"6. The General Board foresees great difficulty in clearly limiting gases so as to avoid unnecessary suffering in gas warfare and in enforcing rules which will avert suffering or the possible destruction of innocent lives of noncombatants, including women

and children. Gas warfare threatens to become so efficient as to endanger the very existence of civilization.

"7. The General Board believes it to be sound policy to prohibit gas warfare in every form and against every objective, and so recommends." (Ibid, p. 734.)

Reference in the discussion was made to article 171 of the Treaty of Versailles, June 28, 1919, which as applying to gas in the English and French is:

"The use of asphyxiating, poisonous or other gases and all the analogous liquids, materials or devices being prohibited, their manufacture and importation are strictly forbidden in Germany."

"The same applies to materials specially intended for the manufacture, storage and use of the said products or devices." (Ibid, p. 738.)

"L'emploi des gaz asphyxiants, toxiques ou similaires, ainsi que de tous liquides, matières ou procédés analogues, étant prohibé la fabrication et l'importation en sont rigoureusement interdites en Allemagne.

"Il en est de même du matériel spécialement destiné à la fabrication, à la conservation ou à l'usage desdits produits ou procédés." (Ibid, p. 739.)

A convention embodying this principle was drawn up at the Washington Conference, but did not become effective because not ratified by all the powers.

In 1925, however, a protocol relating to gas only was opened for signature at Geneva, and a large number of ratifications or adhesions have been deposited. The parts of this protocol referring particularly to the conduct of war are in English and French as follows:

"Whereas the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids materials or devices, has been justly condemned by the general opinion of the civilized world; and

"Whereas the prohibition of such use has been declared in Treaties to which the majority of Powers of the world are Parties; and

"To the end that this prohibition shall be universally accepted as a part of International Law, binding alike the conscience and the practice of nations;

DECLARE:

"That the High Contracting Parties, so far as they are not already Parties to Treaties prohibiting such use, accept this

prohibition, agree to extend this prohibition to the use of bacteriological methods of warfare and agree to be bound as between themselves according to the terms of this declaration." (94 League of Nations Treaty Series, p. 65.)

"Considérant que l'emploi à la guerre de gaz asphyxiants, toxiques ou similaires, ainsi que de tous liquides, matières ou procédés analogues, a été à juste titre condamné par l'opinion générale du monde civilisé;

"Considérant que l'interdiction de cet emploi a été formulée dans des traités auxquels sont Parties la plupart des Puissances du monde;

"Dans le dessein de faire universellement reconnaître comme incorporée au droit international cette interdiction, qui s'impose également à la conscience et à la pratique des nations,

"DÉCLARENT:

"Que les Hautes Parties contractantes, en tant qu'elles ne sont pas déjà parties à des traités prohibant cet emploi, reconnaissent cette interdiction, acceptent d'étendre cette interdiction d'emploi aux moyens de guerre bactériologiques et conviennent de se considérer comme liées entre elles aux termes de cette déclaration." (Ibid, p. 65.)

It would seem that the prohibition in English in the words "asphyxiating, poisonous, or other gases" is not identical with the French "gaz asphyxiants, toxiques ou similaires." The English would seem to be a general prohibition of the use of gas while the French would prohibit gases of specific types. Both would prohibit bacteriological warfare.

It could scarcely be asserted even in 1925 that the use of all kinds of gases "had been condemned by the general opinion of the civilized world." Indeed smoke screens and similar methods were then and are now approved. It may be difficult to make a legal distinction between smoke in the eyes of an enemy and a gas that may cause tears, while neither may cause suffering which the protocol aims to prohibit and which "has been justly condemned by the general opinion of the civilized world."

Treaty of Versailles, article 171.—The treaty of Versailles though signed by a large number of states was

not ratified by all the signatories, and some of its provisions have for various reasons become inoperative.

Article 171 in the French and English versions of the Treaty of Versailles is as follows:

"ARTICLE 171."

"L'emploi des gaz asphyxiants, toxiques ou similaires, ainsi que de tous liquides, matières ou procédés analogues, étant prohibé, la fabrication et l'importation en sont rigoureusement interdites en Allemagne.

"Il en est de même du matériel spécialement destiné à la fabrication, à la conservation ou à l'usage desdits produits ou procédés.

"Sont également prohibées la fabrication et l'importation en Allemagne des chars blindés, tanks ou de tout autre engin similaire pouvant servir à des buts de guerre."

"ARTICLE 171."

"The use of asphyxiating, poisonous or other gases and all analogous liquids, materials or devices being prohibited, their manufacture and importation are strictly forbidden in Germany.

"The same applies to materials specially intended for the manufacture, storage and use of the said products or devices.

"The manufacture and the importation into Germany of armoured cars, tanks and all similar constructions suitable for use in war are also prohibited."

While the accuracy of the translation of the article may be open to question, the English form does not seem to conform to international law because there are some gases other than asphyxiating and poisonous, the use of which is not prohibited in war. If a gas causes unnecessary suffering, its use would be considered contrary to international law. The use of a tear gas bomb might be preferred to a projectile that would result in asphyxiating the personnel of the vessel of war by drowning, and tear gas has not yet been included in the list of prohibited gases.

Bombardment from aircraft.—Regulations in regard to the discharge of projectiles from aircraft have been made. None are now generally accepted unless it be

admitted that an amendment in Laws and Customs of War on Land of 1907 by which it was thought by some the prohibition of undefended towns was extended to operations of aircraft. The 1899 convention had prohibited bombardment of undefended "towns, villages, habitations, or buildings." The 1907 inserted the words "by any means whatever." This would not in any case apply to dropping bombs on a vessel of war.

The proposed Hague rules of 1923 in regard to aerial warfare in article 24 provide:

"1. Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

"2. Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition or distinctively military supplies; lines of communication or transportation used for military purposes.

"3. The bombardment of cities, towns, villages, dwellings or buildings not in the immediate neighbourhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph 2 are so situated that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

"4. In the immediate neighbourhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population.

"5. A belligerent State is liable to pay compensation for injuries to person or to property caused by the violation by any of its officers or forces of the provisions of this article." (1924 Naval War College, International Law Documents, p. 120.)

Attention on this article was particularly fixed upon land warfare and the report of the Commission of Jurists explains the article as follows:

"Agreement on the following article specifying the objects which may legitimately be bombarded from the air was not

reached without prolonged discussion. Numerous proposals were put forward by the various delegations before unanimity was ultimately attained. The text of these proposals will be found in the minutes. In particular, mention may be made of an Italian proposal of the 8th February, on which the text ultimately adopted was in great part founded. Regret was expressed by some delegations that a more far-reaching prohibition did not meet with unanimous acceptance.

"The terms of the article are so clear that no explanation of the provisions is necessary, but it may be well to state that in the phrase in paragraph 2 'military establishments or depots' the word 'depots' is intended to cover all collections of supplies for military use which have passed into the possession of the military authorities and are ready for delivery to the forces, 'distinctively military supplies' in the succeeding phrase is intended to cover those which by their nature show that they are certainly manufactured for military purposes.

"If the code of rules of aerial warfare should eventually be annexed to a convention, paragraph 5 of the article would find a more appropriate place in the convention.

"It will be noticed that for aerial bombardment the test adopted in article 25 of the Land Warfare Regulations, that of the town, &., being defended, is abandoned. The nature of the objective or the use to which it is being put now becomes the test." (Ibid.)

There would be no question that a vessel of war would be and has been regarded as a military objective.

Proposals before the conference for the reduction and limitation of armaments, 1932.—Numerous proposals were presented to the conference commonly referred to as the "Disarmament Conference."

On February 5, 1932, the French delegation in the preamble to certain proposals stated:

"The Government of the Republic, conscious of the gravity of the problem to be solved, is convinced that, in accordance with previous work of the League of Nations, the Conference should deal with this problem as a part of general policy.

"This is all the more important since it meets at a time of economic and moral tension, at a time of general disturbance and uneasiness, when events emphasize the absolute necessity of a better organisation in a tormented world.

"The Government of the Republic is anxious to honor the promise contained in its memorandum of July 15th, 1931, and to reply to the repeated appeals made by the League of Nations, notably in the resolution of the Assembly of 1927. It intends thus to fulfil a double duty.

"It assumes that, on the basis of the draft Convention of 1930, action will be taken with the least possible delay.

"Further, it presents herewith proposals for placing civil aviation and bombing aircraft, and also certain material of land and naval forces, at the disposal of the League of Nations; for the creation of a preventive and punitive international force; for the political conditions upon which such measures depend; and, lastly, for new rules providing for the protection of civil population." (League of Nations Publications, Conf. D. 56, 1931. IX. p. 1.)

The French Government proposed that civil aviation and bombing aircraft be placed at the disposal of the League of Nations. In the detailed provisions of the French proposals, it was stated:

"In addition to the preceding provisions, the Government of the Republic proposed the adoption of the following rules which can be adopted unconditionally:

"(a) The use by aeroplanes and by land or naval artillery of projectiles which are specifically incendiary or which contain poison gases or bacteria is forbidden, whatever the objective." (Ibid., p. 3.)

The German delegation also submitted certain positive proposals on February 18, 1932:

"17. The maintenance of air forces of any kind is forbidden. The total air force material which has so far been either in service or in reserve or on stock shall be destroyed, except those armaments which are to be incorporated in the quantities allowed for land and naval forces.

"18. The dropping of bombs or any other objects or materials serving military purposes from aircraft, as well as all preparations to this effect shall be forbidden without any exception.

"19. With a view to strictly enforcing the prohibition of any military aviation, the following shall, *inter alia*, be forbidden.

"(a) Any instruction and training of any person in aviation having a military character or a military purpose." (Ibid., Conf. D. 79. IX. 1932, p. 3.)

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The Soviet delegation made the most comprehensive proposal to the effect that the real organization for peace and security would be through "the general complete and rapid abolition of all armed forces."

The Italian delegation proposed the abolition of both aircraft carriers and bombing aircraft.

Other states proposed the prohibition of military aviation and of the use of bombs from aircraft.

Even the American delegation on February 18, 1932, indicated that the Government would "join in formulating the most effective measures to protect civilian populations against aerial bombing."

The Japanese delegation made a similar proposition and would also prohibit aircraft-landing platforms and aircraft carriers.

(*d*) *Use of gas.*—As military aircraft only are entitled to exercise belligerent rights, the rights thus exercised should be limited to those of lawful warfare. The use of poisonous gases and those that cause unnecessary suffering is in general prohibited. The use of smoke screens and of tear gas has not been included in the category of prohibited acts, but the use of bacteriological warfare has been prohibited.

Hospital ships in World War.—There were many charges and counter-charges in regard to the misuse of hospital ships during the World War. The French Government even announced that its hospital ships would carry a certain number of German officers who had been made prisoners of war, and in retaliation the German Government announced that it would expose French officers in the war zone on land. In the Mediterranean the controversy was adjusted by an agreement in September 1917 that a Spanish officer should accompany the hospital ship in order to see that the Hague convention should be observed. The experience of the World War showed that in spite of revisions, the Geneva convention should have still further revision to

meet new and changing conditions of warfare. Such questions arise as: What should be the degree of sickness entitling a military man to travel upon a hospital ship; how far may hospital ships evacuate crowded hospitals on land; might a transport ship on an outward voyage to the seat of war act as a hospital ship carrying sick and wounded on its return?

In general the tendency during the World War was to interpret convention X strictly and to confine the action of the ships to "assisting the wounded, sick, and shipwrecked", and not including those wounded or sick on land by evacuating land hospitals.

The "Orel", 1904.—The *Orel* (*Aryol*), a steamer belonging to the Russian volunteer fleet, was chartered at the outbreak of the Russo-Japanese War as a hospital ship to serve the Russian Red Cross. Japan was notified, and assented to this action.

En route to the Far East, the *Orel* on one occasion conveyed instructions from the commander in chief to one of the ships of the squadron. She was also instructed to purchase insulated wire in Cape Town. After arrival in Far Eastern waters, she took on board the uninjured captain and three members of the crew of ship which had been destroyed by a vessel of war of the Russian fleet. In approaching the Straits of Tsushima, the *Orel* was in the position of a fleet reconnaissance vessel, and was stopped and taken to the Japanese prize court.

The conclusion of the Court is as follows:

"A hospital ship is only exempt from capture if she fulfils certain conditions and is engaged solely in the humane work of aiding the sick and wounded. That she is liable to capture, should she be used by the enemy for military purposes, is admitted by International Law, and is clearly laid down by the stipulations of The Hague Convention No. 3 of July 29th, 1899, for the adaptation to maritime warfare of the principles of the Geneva Convention of August 22nd, 1864. Although the "Orel" had been lawfully equipped and due notification concerning her

had been given by the Russian Government to the Japanese Government, yet her action in communicating the orders of the Commander-in-Chief of the Russian Second Pacific Squadron to other vessels during her eastward voyage with the squadron, and her attempt to carry persons in good health, *i. e.*, the master and three other members of the crew of a British steamship captured by the Russian fleet, to Vladivostock, which is a naval port in enemy territory, were evidently acts in aid of the military operations of the enemy. Further, when the facts that she was instructed by the Russian squadron to purchase munitions of war, and that she occupied the position usually assigned to a ship engaged in reconnaissance, are taken in consideration, it is reasonable to assume that she was constantly employed for military purposes on behalf of the Russian squadron. She is, therefore, not entitled to the exemptions laid down in The Hague Convention for the adaptation to maritime warfare of the principles of the Geneva Convention, and may be condemned according to International Law." (2 Hurst and Bray, Russia and Japanese Prize Cases, p. 354.)

The "Ophelia", 1914.—The *Ophelia* was a German auxiliary military hospital ship, met in the North Sea October 18, 1914, and taken on suspicion to a British port where she was detained as prize. The *Ophelia* was condemned as prize on May 21, 1915, on the ground that "she was adapted and used as a signaling ship for military purposes." The case was appealed to the Judicial Committee of the Privy Council where a decision was rendered May 8, 1916.

Particular reference was made to articles 1 and 8 of Hague Convention 10 of 1907.

"ART. 1. Military hospital ships, that is to say, ships constructed or adapted by States wholly and solely with a view to aiding the wounded, sick, and shipwrecked, the names of which have been communicated to the belligerent Powers, shall be respected and cannot be captured.

"ART. 8. The protection to which hospital ships are entitled ceases if they are used to commit acts harmful to the enemy. The presence of wireless telegraphy apparatus on board is not a sufficient reason for withdrawing protection."

It was stated in this case that the only question in the nature of a point of law was as to the presence of a

wireless telegraphy apparatus. The formalities constituting the *Ophelia* a hospital ship had been met.

Question arose as to whether the *Ophelia* was "wholly and solely" fitted as a hospital ship.

The opinion of Commander Newman was stated:

"In the opinion of Commander Newman, who had special experience in the fitting of hospital ships, the *Ophelia* was not only unsuitable for use as a hospital ship, but was undoubtedly fitted and intended for signalling purposes. He came to that conclusion without knowing that the ship was suspected of acting as a signalling ship, and when he had merely been instructed to report on her suitability as a hospital ship." ([1916] 2 A. C. 206.)

The opinion in the judgment remarked that—

"It is obvious that there could hardly be a greater or more dangerous abuse of the privileges of a hospital ship than the communicating to the naval authorities of her nation information which she would be constantly in a position to obtain by virtue of her immunity. Her signalling apparatus ought to be confined strictly to what would be necessary for receiving instruction as to her duties and for calling for assistance in the performance of them and such like legitimate purposes. That the risk of such abuse was present to the minds of the framers of the Hague Convention is shown by the mention of wireless telegraphy. Instead of the signalling apparatus and equipment of the *Ophelia* being confined within the narrow limits necessary for a *bona fide* hospital ship, it was obviously very largely in excess of them. * * * It is, however, the enormous number of Very's signal lights which were on board which seemed to the President, and seems also to the Board, practically conclusive that the vessel was specially equipped for signalling. These lights are fired from a special kind of pistol, of which there were two on board. Of these Very's lights she had on board no less than 600 green, 480 red, and 140 white lights, obviously a most abnormal number. It is said by Commander Newman that a British vessel of the same class would have about 12 of each. At the trial it was discovered for the first time that a record of the number of these lights which had been used, had been kept, but that it was destroyed by the paymaster by the order of Captain Pfeiffer after the capture, and on the evening of the day when they had been informed that the vessel was to be put in the Prize Court. * * *

"On these facts the learned President found that the *Ophelia* was not adapted or equipped *solely* as a hospital ship, and with that finding their Lordships agree. This finding would in itself justify the condemnation, but the matter ought not to be left to rest there, and the use actually made of the vessel must now be considered." (Ibid.)

The testimony as to the use of the *Ophelia* for hospital work is conflicting, and her movements were regarded as suspicious, and apparently some ship's papers were destroyed. The appeal supported the opinion of the lower court that—

"the *Ophelia* was not constructed, adapted *or used* for the special and *sole* purpose of affording aid and relief to the wounded, sick, and shipwrecked, and that she was adapted and *used* as a signalling ship for military purposes." (Ibid.)

Controversy on use of hospital ships, 1917.—On January 28, 1917, the German foreign office requested the American Embassy at Berlin to transmit to the British Government a memorandum respecting the misuse of hospital ships. In this memorandum the first paragraph states:

"For some time the enemy Governments, especially the British Government, have used their hospital ships not only for the purpose of rendering assistance to the wounded, sick, and shipwrecked, but also for military purposes, and have thereby violated the Hague Convention regarding the application of the Geneva Convention to maritime warfare." (Parliamentary Papers, Miscellaneous, No. 16 [1917] Cd. 8692, p. 3.)

There follow specifications of accusations which the German Government claim have most seriously violated the Hague convention regarding the application of the Geneva convention to maritime warfare, and then the memorandum concludes:

"In view of the breach of treaty committed by their enemies the German Government would be entitled to free themselves altogether from the obligations contained in the Convention; for reasons of humanity, however, they desire still to refrain from doing so. On the other hand, they can no longer permit the British Government to despatch their troop and munition

transports to the principal theatre of war under the hypocritical cloak of the Red Cross. They therefore declare that from this moment on they will no longer suffer any enemy hospital ship in the maritime zone which is situated between the lines Flamborough Head to Terschelling on the one hand and Ushant to Lands End on the other. Should enemy hospital ships be encountered in this maritime zone, after an appropriate lapse of time, they will be considered as belligerent and will be attacked without further consideration. The German Government believe themselves all the more justified in adopting these measures as the route from Western and Southern France to the West of England still remains open for enemy hospital ships, and the transport of English wounded to their homes can consequently be effected now as heretofore without hinderance." (Ibid., p. 4.)

To the charges made by the German Government, the British Government replied that the German vessels of war had neglected the remedy which was legally available to them in case of suspicion. This was to visit and inspect the hospital ship in order to determine whether the suspicion was well founded. After a general denial of the German charges, each is specifically discussed and reasons given for the statement that British hospital ships had conformed to the requirements of the Hague convention.

International Red Cross, 1917.—The German action in regard to hospital ships led the International Red Cross Committee to address a protest to the German Government which was later given to the press.

"Genève, 14 avril 1917.

"Le 29 janvier 1917, le gouvernement allemand a rendu une ordonnance par laquelle, à partir de ce jour, tous les navires-hôpitaux portant les marques de la Croix-Rouge seraient considérés comme vaisseaux de guerre, attaqués et coulés comme tels, dans une zone déterminée de la Manche et de la mer du Nord.

"Le gouvernement allemand donne comme motif de cette mesure rigoureuse le fait que le gouvernement anglais se servirait habituellement de ses navires-hôpitaux pour le transport de troupes et de munitions, protégées ainsi par le drapeau de la Croix-Rouge. Le gouvernement allemand puise dans cette

accusation le droit de se délier vis-à-vis des navires-hôpitaux du respect que les conventions de Genève et de la Haye imposent à leur égard.

"Le 20 mars 1917, un sous-marin allemand torpillait l'*Asturias*, un vaisseau dont l'apparence ne laissait aucun doute sur sa destination, et qui la veille avait déposé un grand nombre de blessés et de malades. Précédemment déja, un autre grand vaisseau-hôpital, le *Britannic*, avait eu le même sort.

"Le Comité international, qui a le droit et le devoir de faire respecter les principes de la Croix-Rouge et de la convention de Genève, en signalant les atteintes que pourraient y être portées, attire la très sérieuse attention du gouvernement impérial sur la responsabilité qu'il assumerait vis-à-vis du monde civilisé en persistant dans une résolution en contradiction avec les conventions humanitaires qu-il s'est solennellement engagé à respecter.

"En torpillant des navires-hôpitaux, on s'attaque non à des combattants, mais à des êtres sans défense à des blessés mutilés ou brisés par la mitraille, à des femmes que se dévouent à une oeuvre de secours et de charité, à des hommes qui ont pour armes non celles qui servent à ôter la vie à l'adversaire, mais celles au contraire qui peuvent la lui conserver et apporter quelque soulagement à ses souffrances.

"Tout navire-hôpital muni des signes extérieurs prévus par les conventions internationales et dont mise en service a été régulièrement notifiée aux belligérants, est au bénéfice d'une présomption légale et doit être respecté par les belligerants.

"Ceux-ci, s'ils ont de justes motifs de craindre qu'un navire-hôpital soit partiellement affecté à des buts militaires, ont sur lui, en vertu de l'article 4 de la convention de la Haye, le droit de contrôle et de visite: ils peuvent lui imposer une direction déterminée et mettre à bord un Commissaire, même le détenir, si la gravité des circonstances l'exige. Ils n'ont en aucun cas le droit de le couler et d'exposer à la mort tout le personnel hospitalier et les blessés transportés par ce navire.

"L'*Asturias* paraît avoir été torpillé sans qu'on se soit préoccupé ni de son caractère, ni de sa destination.

"Même si l'on admettait l'exactitude des faits sur lesquels l'Allemagne s'appuie pour justifier son ordonnance, le Comité international estime que rien ne saurait excuser le torpillage d'un navire-hôpital.

"C'est pourquoi, considérant l'ordonnance du 29 janvier comme étant en désaccord avec les conventions internationales, il ex-

prime le voeu que cette ordonnance ne soit plus appliquée à l'avenir.

"*Au nom du Comité international de la Croix-Rouge:*

"*Le Président,*

"G. Ador.

"*Les vice-Présidents,*

"Prof. Ad. d'Espine,

"Edouard Naville."

(*Revue de Droit International Public*, vol. 24 (1917), no. 6, p. 471.)

(e) *Hospital ships.*—Hospital ships are not to be used "for any military purpose." As long as the hospital ships conform to the provisions of the Geneva convention they are not to be captured and are granted in neutral ports exemption from the usual restrictions applying to vessels of war. These exemptions are granted on the ground of the humanitarian occupation to which the hospital ship is devoted and the exemption ceases when other use is made of the vessel. At such time each state must, considering the circumstances, determine its attitude toward and treatment of the ship. The neutral state must fulfil its obligations and the belligerent state may exercise its rights.

As the hospital ship is supposed to be an unarmed vessel with a nonbelligerent personnel and incapacitated or shipwrecked persons on board and as by the Geneva convention belligerents have the right to "control and visit" hospital ships or even to detain them, there would seem to be no ground for firing upon such a ship unless to bring it to if it was attempting to escape.

SOLUTION

(*a*) 1. The private neutral seaplane alighting within the blockade lines should be seized. The proof of innocence rests upon the seaplane.

2. The private neutral seaplane alighting 50 miles outside the blockade lines is not liable to seizure unless on grounds discovered by visit and search.

(*b*) The military aircraft and crew should be interned by state B.

(*c*) The armed private aircraft of state X should not be supplied with fuel in a port of R.

(*d*) The use of tear gas by one belligerent against another is not prohibited, therefore the resort to the use of bacteriological bombs in retaliation is unlawful.

(*e*). 1. Neutral state C, while not under obligation to pass upon the character of an act of a hospital ship of a belligerent, may treat such a ship as a vessel of war if convinced that the ship has forfeited its immunities.

2. The capture of the *Safety* by the fleet of Y is lawful, but care should be taken to restrict the use of force to the minimum.

APPENDIX 1

CONVENTION ON MARITIME NEUTRALITY

By the President of the United States of America

A PROCLAMATION

Whereas a Convention on Maritime Neutrality was adopted in the English, Spanish, Portuguese and French languages by the Plenipotentiaries of the United States of America (with a reservation in respect of Section 3 of Article 12), Peru, Uruguay, Panama, Ecuador, Mexico, El Salvador, Guatemala, Nicaragua, Bolivia, Venezuela, Colombia, Honduras, Costa Rica, Chile (with a reservation), Brazil, Argentina, Paraguay, Haiti, Dominican Republic and Cuba (with a reservation), at the Sixth International Conference of American States which assembled at Habana, Cuba, from January 16 to February 20, 1928, the English text of which convention, as contained in the final act signed by the Plenipotentiaries of the said states at the closing session of the said conference, is word for word as follows:

Convention

on maritime neutrality

The Governments of the Republics represented at the Sixth International Conference of American States, held in the city of Habana, Republic of Cuba, in the year 1928;

Desiring that, in case war breaks out between two or more states the other states may, in the service of peace, offer their good offices or mediation to bring the conflict to an end, without such an action being considered as an unfriendly act;

Convinced that, in case this aim cannot be attained, neutral states have equal interest in having their rights respected by the belligerents;

Considering that neutrality is the juridical situation of states which do not take part in the hostilities, and that it creates rights and imposes obligations of impartiality, which should be regulated;

Recognizing that international solidarity requires that the liberty of commerce should be always respected, avoiding as far as possible unnecessary burdens for the neutrals;

It being convenient, that as long as this object is not reached, to reduce those burdens as much as possible; and

In the hope that it will be possible to regulate the matter so that all interests concerned may have every desired guaranty;

Have resolved to formulate a convention to that effect and have appointed the following plenipotentiaries:

[Here follow the names of the plenipotentiaries.]

Section I.—Freedom of commerce in time of war

ARTICLE 1.—The following rules shall govern commerce in time of war:

1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not neutral any merchant ship with the object of ascertaining its character and nationality and of verifying whether it conveys cargo prohibited by international law or has committed any violation of blockade. If the merchant ship does not heed the signal to stop, it may be pursued by the warship and stopped by force; outside of such a case the ship cannot be attacked unless, after being hailed, it fails to observe the instructions given it.

The ship shall not be rendered incapable of navigation before the crew and passengers have been placed in safety.

2. Belligerent submarines are subject to the foregoing rules. If the submarine cannot capture the ship while observing these rules, it shall not have the right to continue to attack or to destroy the ship.

ARTICLE 2.—Both the detention of the vessel and its crew for violation of neutrality shall be made in accordance with the procedure which best suits the state effecting it and at the expense of the transgressing ship.

Said state, except in the case of grave fault on its part, is not responsible for damages which the vessel may suffer.

Section II.—Duties and rights of belligerents

ARTICLE 3.—Belligerent states are obligated to refrain from performing acts of war in neutral waters or other acts which may constitute on the part of the state that tolerates them, a violation of neutrality.

ARTICLE 4.—Under the terms of the preceding article, a belligerent state is forbidden:

a) To make use of neutral waters as a base of naval operations against the enemy, or to renew or augment military supplies or the armament of its ships, or to complete the equipment of the latter;

b) To install in neutral waters radio-telegraph stations or any other apparatus which may serve as a means of communication with its military forces, or to make use of installations of this kind it may have established before the war and which may not have been opened to the public.

ARTICLE 5.—Belligerent warships are forbidden to remain in the ports or waters of a neutral state more than twenty-four hours. This provision will be communicated to the ship as soon as it arrives in port or in the territorial waters, and if already there at the time of the declaration of war, as soon as the neutral state becomes aware of this declaration.

Vessels used exclusively for scientific, religious, or philanthropic purposes are exempted from the foregoing provisions.

A ship may extend its stay in port more than twenty-four hours in case of damage or bad conditions at sea, but must depart as soon as the cause of the delay has ceased.

When, according to the domestic law of the neutral state, the ship may not receive fuel until twenty-four hours after its arrival in port, the period of its stay may be extended an equal length of time.

ARTICLE 6.—The ship which does not conform to the foregoing rules may be interned by order of the neutral government.

A ship shall be considered as interned from the moment it receives notice to that effect from the local neutral authority, even though a petition for reconsidera-

tion of the order has been interposed by the transgressing vessel, which shall remain under custody from the moment it receives the order.

ARTICLE 7.—In the absence of a special provision of the local legislation, the maximum number of ships of war of a belligerent which may be in a neutral port at the same time shall be three.

ARTICLE 8.—A ship of war may not depart from a neutral port within less than twenty-four hours after the departure of an enemy warship. The one entering first shall depart first, unless it is in such condition as to warrant extending its stay. In any case the ship which arrived later has the right to notify the other through the competent local authority that within twenty-four hours it will leave the port, the one first entering, however, having the right to depart within that time. If it leaves, the notifying ship must observe the interval which is above stipulated.

ARTICLE 9.—Damaged belligerent ships shall not be permitted to make repairs in neutral ports beyond those that are essential to the continuance of the voyage and which in no degree constitute an increase in its military strength.

Damages which are found to have been produced by the enemy's fire shall in no case be repaired.

The neutral state shall ascertain the nature of the repairs to be made and will see that they are made as rapidly as possible.

ARTICLE 10.—Belligerent warships may supply themselves with fuel and stores in neutral ports, under the conditions especially established by the local authority and in case there are no special provisions to that effect, they may supply themselves in the manner prescribed for provisioning in time of peace.

ARTICLE 11.—Warships which obtain fuel in a neutral port cannot renew their supply in the same state until a period of three months has elapsed.

ARTICLE 12.—Where the sojourn, supplying, and provisioning of belligerent ships in the ports and jurisdictional waters of neutrals are concerned, the provisions relative to ships of war shall apply equally:

1. To ordinary auxiliary ships;

2. To merchant ships transformed into warships, in accordance with Convention VII of The Hague of 1907.

The neutral vessel shall be seized and in general subjected to the same treatment as enemy merchantmen:

a) When taking a direct part in the hostilities;

b) When at the orders or under the direction of an agent placed on board by an enemy government;

c) When entirely freight-loaded by an enemy government;

d) When actually and exclusively destined for transporting enemy troops or for the transmission of information on behalf of the enemy.

In the cases dealt with in this article, merchandise belonging to the owner of the vessel or ship shall also be liable to seizure.

3. To armed merchantmen.[1]

ARTICLE 13.—Auxiliary ships of belligerents, converted anew into merchantmen, shall be admitted as such in neutral ports subject to the following conditions:

1. That the transformed vessel has not violated the neutrality of the country where it arrives;

2. That the transformation has been made in the ports or jurisdictional waters of the country to which the vessel belongs, or in the ports of its allies;

3. That the transformation be genuine, namely, that the vessel show neither in its crew nor in its equipment that it can serve the armed fleet of its country as an auxiliary, as it did before;

4. That the government of the country to which the ship belongs communicate to the states the names of auxiliary craft which have lost such character in order to recover that of merchantmen; and

5. That the same government obligate itself that said ships shall not again be used as auxiliaries to the war fleet.

ARTICLE 14.—The airships of belligerents shall not fly above the territory or the territorial waters of neutrals if it is not in conformity with the regulations of the latter.

Section III.—Rights and duties of neutrals

ARTICLE 15.—Of the acts of assistance coming from the neutral states, and the acts of commerce on the part of individuals, only the first are contrary to neutrality.

[1] This sec. 3 was not accepted by the United States of America.

ARTICLE 16.—The neutral state is forbidden:

a) To deliver to the belligerent, directly or indirectly, or for any reason whatever, ships of war, munitions or any other war material;

b) To grant it loans, or to open credits for it during the duration of war.

Credits that a neutral state may give to facilitate the sale or exportation of its food products and raw materials are not included in this prohibition.

ARTICLE 17.—Prizes cannot be taken to a neutral port except in case of unseaworthiness, stress of weather, or want of fuel or provisions. When the cause has disappeared, the prizes must leave immediately; if none of the indicated conditions exist, the state shall suggest to them that they depart, and if not obeyed shall have recourse to the means at its disposal to disarm them with their officers and crew, or to intern the prize crew placed on board by the captor.

ARTICLE 18.—Outside of the cases provided for in Article 17, the neutral state must release the prizes which may have been brought into its territorial waters.

ARTICLE 19.—When a ship transporting merchandise is to be interned in a neutral state, cargo intended for said country shall be unloaded and that destined for others shall be transhipped.

ARTICLE 20.—The merchantman supplied with fuel or other stores in a neutral state which repeatedly delivers the whole or part of its supplies to a belligerent vessel, shall not again receive stores and fuel in the same state.

ARTICLE 21.—Should it be found that a merchantman flying a belligerent flag, by its preparations or other circumstances, can supply to warships of a state the stores which they need, the local authority may refuse it supplies or demand of the agent of the company a guaranty that the said ship will not aid or assist any belligerent vessel.

ARTICLE 22.—Neutral states are not obligated to prevent the export or transit at the expense of any one of the belligerents of arms, munitions and in general of anything which may be useful to their military forces.

Transit shall be permitted when, in the event of a war between two American nations, one of the bellig-

erents is a mediterranean country, having no other means of supplying itself, provided the vital interests of the country through which transit is requested do not suffer by the granting thereof.

ARTICLE 23.—Neutral states shall not oppose the voluntary departure of nationals of belligerent states even though they leave simultaneously in great numbers; but they may oppose the voluntary departure of their own nationals going to enlist in the armed forces.

ARTICLE 24.—The use by the belligerents of the means of communication of neutral states or which cross or touch their territory is subject to the measures dictated by the local authority.

ARTICLE 25.—If as the result of naval operations beyond the territorial waters of neutral states there should be dead or wounded on board belligerent vessels, said states may send hospital ships under the vigilance of the neutral government to the scene of the disaster. These ships shall enjoy complete immunity during the discharge of their mission.

ARTICLE 26.—Neutral states are bound to exert all the vigilance within their power in order to prevent in their ports or territorial waters any violation of the foregoing provisions.

Section IV.—Fulfilment and observance of the laws of neutrality.

ARTICLE 27.—A belligerent shall indemnify the damage caused by its violation of the foregoing provisions. It shall likewise be responsible for the acts of persons who may belong to its armed forces.

ARTICLE 28.—The present convention does not affect obligations previously undertaken by the contracting parties through international agreements.

ARTICLE 29.—After being signed, the present convention shall be submitted to the ratification of the signatory states. The Government of Cuba is charged with transmitting authentic certified copies to the governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington, the Union to notify the signatory governments of said deposit. Such notifications shall be considered as an

exchange of ratifications. This convention shall remain open to the adherence of nonsignatory states.

In witness whereof, the aforenamed plenipotentiaries sign the present convention in Spanish, English, French, and Portuguese, in the city of Habana, the 20th day of February, 1928.

Ratification deposited, March 22, 1932.

Proclaimed by President of the United States, May 26, 1932.

APPENDIX II

CONVENTION CONCERNING THE RIGHTS AND DUTIES OF STATES IN THE EVENT OF CIVIL STRIFE

The Governments of the Republics represented at the Sixth International Conference of American States, held in the city of Habana, Republic of Cuba, in the year 1928, desirous of reaching an agreement as to the duties and rights of states in the event of civil strife, have appointed the following plenipotentiaries:

[Here follow the names of the plenipotentiaries.]

Who, after exchanging their respective full powers, which were found to be in good and due form, have agreed upon the following:

Article 1

The contracting states bind themselves to observe the following rules with regard to civil strife in another one of them:

1. To use all means at their disposal to prevent the inhabitants of their territory, nationals or aliens, from participating in, gathering elements, crossing the boundary or sailing from their territory for the purpose of starting or promoting civil strife.

2. To disarm and intern every rebel force crossing their boundaries, the expenses of internment to be borne by the state where public order may have been disturbed. The arms found in the hands of the rebels may be seized and withdrawn by the government of the country granting asylum, to be returned, once the struggle has ended, to the state in civil strife.

3. To forbid the traffic in arms and war material, except when intended for the government, while the belligerency of the rebels has not been recognized, in which latter case the rules of neutrality shall be applied.

4. To prevent that within their jurisdiction there be equipped, armed or adapted for warlike purposes any vessel intended to operate in favor of the rebellion.

Article 2

The declaration of piracy against vessels which have risen in arms, emanating from a government, is not binding upon the other states.

The state that may be injured by depredations originating from insurgent vessels is entitled to adopt the following punitive measures against them: Should the authors of the damages be warships, it may capture and return them to the government of the state to which they belong, for their trial; should the damage originate with merchantmen, the injured state may capture and subject them to the appropriate penal laws.

The insurgent vessel, whether a warship or a merchantman, which flies the flag of a foreign country to shield its actions, may also be captured and tried by the state of said flag.

Article 3

The insurgent vessel, whether a warship or a merchantman, equipped by the rebels, which arrives at a foreign country or seeks refuge therein, shall be delivered by the government of the latter to the constituted government of the state in civil strife, and the members of the crew shall be considered as political refugees.

Article 4

The present convention does not affect obligations previously undertaken by the contracting parties through international agreements.

Article 5

After being signed, the present convention shall be submitted to the ratification of the signatory states. The Government of Cuba is charged with transmitting authentic certified copies to the governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington, the Union to notify the signatory governments of said deposit. Such notification shall be considered as an exchange of ratifications. This convention shall remain open to the adherence of non-signatory states.

In witness whereof the aforenamed plenipotentiaries sign the present convention in Spanish, English, French, and Portuguese, in the city of Habana, the 20th day of February, 1928.

[Ratification of the United States deposited with Pan American Union May 21, 1930; proclaimed by the President of the United States, June 6 1930.]

INDEX

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